INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
1818 H STREET, NW | WASHINGTON, DC 20433 | USA
TELEPHONE +1 (202) 458 1534 | FACSIMILE +1 (202) 522 2615
WWW.WORLDBANK.ORG/ICSID

# CERTIFICATE

**WEBUILD S.P.A. (FORMERLY SALINI IMPREGILO S.P.A.)**

**v.**

**ARGENTINE REPUBLIC**

**(ICSID CASE NO. ARB/15/39)**

I hereby certify that the attached document is a true copy of the English version of the Tribunal's Award dated April 28, 2025, which incorporates (i) the Tribunal's Decision of Jurisdiction and Admissibility dated February 23, 2018; (ii) the Tribunal's Decision on Liability and Directions on Quantum dated March 3, 2023; and (iii) the Tribunal's Decision on the Respondent's Request for Reconsideration dated September 25, 2024.

Gonzalo Flores
Acting Secretary-General

Washington, D.C., April 28, 2025

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

In the arbitration proceeding between

**WEBUILD S.P.A. (FORMERLY SALINI IMPREGILO S.P.A.)**
Claimant

and

**ARGENTINE REPUBLIC**
Respondent

**ICSID Case No. ARB/15/39**

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# AWARD

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***Members of the Tribunal***
Ms. Lucinda A. Low, President
Professor Kaj Hobér
Professor Jürgen Kurtz

***Secretary of the Tribunal***
Ms. Mercedes Cordido-Freytes de Kurowski

***Assistant to the Tribunal***
Professor Freya Baetens

*Date of dispatch to the Parties:* 28 April 2025

**REPRESENTATION OF THE PARTIES**

*Representing Webuild S.p.A.*:

Mr. Roberto Aguirre Luzi
Mr. Craig S. Miles
Ms. Eldy Quintanilla Roché
Mr. Arturo Oropeza Casas
Mr. Juan Manuel Poggio Aguerre
Mr. Esteban Sánchez

King & Spalding LLP
1100 Louisiana, Suite 4000
Houston, Texas, 77002
United States of America

*Representing the Argentine Republic*:

Mr. Santiago María Castro Videla
Procurador del Tesoro de la Nación

Mr. Juan Ignacio Stampalija
Subprocurador del Tesoro de la Nación

Sr. Julio Pablo Comadira
Subprocurador del Tesoro de la Nación

Ms. Mariana Lozza
Directora Nacional de Asuntos y Controversias Internacionales

Ms. María Alejandra Etchegorry
Subdirectora Nacional de Asuntos y Controversias Internacionales

Procuración del Tesoro de la Nación

Posadas 1641

C1112ADC Buenos Aires
Argentine Republic

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Capitalized terms not defined herein shall have the same meaning as in the Decision on Liability.

| | |
|---|---|
| *Acta acuerdo* | Agreement between Puentes and Argentina of 20 October 2000 |
| Arbitration Rules | ICSID Rules of Procedure for Arbitration Proceedings of 2006 |
| Argentina or the Respondent | The Argentine Republic |
| Bidding Terms | Pliego de Bases y Condiciones del Concurso y sus Circulares |
| BIT or the Treaty | Agreement between the Argentine Republic and the Republic of Italy on the Promotion and Protection of Investments which was signed on 22 May 1990 and entered into force on 14 October 1993 |
| Boskalis Ballast | Boskalis-Ballast Nedam Baggeren, one of Puentes' principal subcontractors and the claimant in an ICC arbitration brought against Puentes for unpaid services that resulted in an award of approximately USD 30 million and was the basis of a 2007 bankruptcy petition against Puentes |
| BRG's Implementations of the Directions on Quantum | Claimant's experts' submission entitled "BRG'S Implementations on the Directions on Quantum" dated 9 June 2023, filed together with Claimant's Post-Decision on Liability Response of the same date |
| Claimant | Webuild S.p.A. (formerly known as Salini Impregilo S.p.A.) |
| C-[#] | Claimant's Exhibit |
| Claimant's Memorial | Claimant's Memorial on the Merits dated 3 January 2017 |
| Claimant's Reply | Claimant's Reply on the Merits dated 16 November 2018 |

| | |
|---|---|
| Claimant's Post-Decision on Liability Response or Claimant's Response to the Tribunal's Instructions on Quantum | Claimant's letter of 9 June 2023 with its response to the Tribunal's instructions on Quantum |
| CL-[#] | Claimant's Legal Authority |
| Concession | Concession for the Project set out in the Bidding Terms |
| Concession Contract or Contract | Concession Contract executed between the Claimant's local Argentine incorporated company, Puentes del Litoral S.A., and the Argentine Republic on 28 January 1998 |
| Consortium | The Claimant, Hochtief Aktiengesellschaft, and several Argentine construction companies |
| Convertibility Law | Law No. 23,928 |
| CPI | U.S. Consumer Price Index |
| Creditor Settlement Agreement | Court Order in Puentes del Litoral S.A. s/insolvency proceedings, 30 December 2009 (C-0206) |
| DCF | Discounted Cash Flow |
| Decision on Jurisdiction | Decision on Jurisdiction and Admissibility issued by the Tribunal on 23 February 2018 |
| Decision on Liability | Decision on Liability and Directions on Quantum issued by the Tribunal on 3 March 2023 |
| Decision on Reconsideration | Decision on Respondent's Request for Reconsideration issued by the Tribunal on 25 September 2024 |
| DoQ | Tribunal's Directions on Quantum included in the Tribunal's Decision on Liability of 3 March 2023 |
| Emergency Law | Law No. 25,561 |
| FAL or Financial Assistance Loan | Financial Assistance Loan agreement executed 21 February 2003 and 4 March 2003 |
| FET | Fair and Equitable Treatment |
| FIFA | Firm and Irrevocable Financing Agreement |

| | |
|---|---|
| First LOU or 2006 LOU | Letter of Understanding of 16 May 2006 |
| First Transitory Agreement | Transitory Agreement of 17 December 2009 |
| Foreign Investment Act | Decree No. 1853/93 |
| Fourth Transitory Agreement | Transitory Agreement of 6 March 2012 |
| Hearing on the Merits or Hearing | Hearing on the Merits held on 2 February 2021 and from 11 to 19 February 2021 by video conference |
| Hochtief | German international construction group Hochtief Aktiengesellschaft |
| Hochtief Arbitration | *Hochtief AG v. The Argentine Republic*, ICSID Case No. ARB/07/31 |
| Hochtief Shareholder Loans | Shareholder Loans made by Hochtief |
| ICSID Convention | Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965 |
| ICSID or the Centre | International Centre for Settlement of Investment Disputes |
| IDB | Inter-American Development Bank |
| IDB Loan or Loan | Loan agreement between Puentes and the Inter-American Development Bank of 1 August 2000 |
| IRR | Internal Rate of Return |
| Joint Updated Valuation Model | Joint Updated Valuation Model prepared by Daniela Bambaci and Santiago Dellepiane of Berkeley Research Group ("BRG") and Melani Machinea and Ernesto Schargrodsky from Universidad Torcuato di Tella ("MS") (jointly referred to therein as "Experts") to provide responses to the Tribunal's Decision on Liability and Directions on Quantum dated 3 March 2023. |
| MEyOSP | Argentine Ministry of Economy and Public Works and Services |
| MFN | Most-Favored-Nation Clause |

| | |
|---|---|
| MS | Melani Machinea and Ernesto Schargrodsky (Respondent's experts on *quantum*) |
| NCC | Net Capital Contributions |
| OCCOVI | Órgano de Control de Concesiones Viales |
| Post-Decision on Liability Valuation Report by Machinea & Schargrodsky | Respondent's experts' submission entitled "Post-Decision on Liability Valuation Report" by Melani Machinea and Ernesto Schargrodsky, dated 8 June 2023, filed together with Respondent's Post-Decision on Liability Brief, dated 9 June 2023 |
| Project | The construction of several roads and a series of bridges and embankments, including a 608-meter-long cable-stayed main bridge, which would connect the cities of Victoria and Rosario in the provinces of Entre Ríos and Santa Fe, Argentina |
| PTN | Procuración del Tesoro de la Nación |
| Puentes, PdL or Concessionaire | Puentes del Litoral S.A. |
| PdL Judgment or Local Judgment | Judgment rendered on 27 June 2024 by the Federal Court on Administrative-Contentious Matters No. 8 of the Argentine Republic in case 25047/2014, *Puentes del Litoral S.A. c/Ministerio de Planificación s/Proceso de Conocimiento* |
| Renegotiation Protocol | Protocol for the renegotiation of the Concession agreed on 6 April 2005 |
| Renegotiation Report | Report on the Merits of the Memorandum of Understanding UNIREN – PUENTES DEL LITORAL SA of 19 January 2007 |
| Request | Request for Arbitration from Salini Impregilo S.p.A. against the Argentine Republic dated 1 September 2015 |
| Resolution 14 | Resolution SOP No. 14/03 |
| Respondent or Argentina | The Argentine Republic |
| R-[#] | Respondent's Exhibit |

| | |
|---|---|
| Respondent's Counter-Memorial | Respondent's Counter-Memorial on the Merits dated 21 June 2018 |
| Respondent's Rejoinder | Respondent's Rejoinder on the Merits dated 7 March 2019 |
| Respondent's Post-Decision on Liability Brief | The Post-Decision on Liability Brief of the Argentine Republic dated 9 June 2023 |
| RL-[#] | Respondent's Legal Authority |
| Second LOU | Letter of Understanding of 16 May 2006 |
| Second Transitory Agreement | Transitory Agreement of 14 June 2010 |
| Shareholder Loans | Loans made by Claimant and Hochtief to Puentes |
| SOP | Secretariat of Public Works |
| State Reform Law | Law No. 23,696 |
| Termination Resolution | Argentine resolution of 26 August 2014, terminating the Concession Contract |
| Third Transitory Agreement | Transitory Agreement of 13 October 2011 |
| Tr. Day [#]: [Speaker(s)] [page:line] | Transcript of the Hearing |
| Tribunal | Arbitral Tribunal constituted on 11 July 2016 and reconstituted on 15 July 2021 |
| UNIREN | Unit of Renegotiation and Analysis of Public Utility Contracts |
| Valuation Date | Date of the Termination Resolution (31 August 2014) in Claimant's damages calculations |
| WACC | The weighted average cost of capital |
| Webuild | Webuild S.p.A. (formerly, Salini Impregilo S.p.A.), an Italian industrial group incorporated under Italian law |
| Webuild Shareholder Loans | Shareholder Loans made by Webuild |

# I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") on the basis of the Agreement between the Argentine Republic and the Republic of Italy on the Promotion and Protection of Investments which was signed on 22 May 1990 and entered into force on 14 October 1993 (the "**BIT**"), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated 14 October 1966 (the "**ICSID Convention**").

2. The Claimant is Webuild S.p. A. (previously Salini Impregilo S.p.A) ("**Webuild**" or "**the Claimant**"), an Italian industrial group specialising in large civil engineering projects, incorporated under Italian law. Depending on the date of the Parties' submissions, the names of **Salini**, **Salini Impregilo** or **Webuild** are used interchangeably to designate the Claimant.

3. The Respondent is the Argentine Republic ("**Argentina**" or "**the Respondent**").

4. The Claimant and the Respondent are collectively referred to as the "**Parties**." The Parties' representatives and their addresses are listed above on page (i).

5. The Claimant and other investors formed a Consortium to participate in a bid for the construction of several roads and a series of bridges and embankments, including a 608-meter-long cable-stayed main bridge, which would connect the cities of Victoria and Rosario in the provinces of Entre Ríos and Santa Fe (hereinafter defined as "**the Project")**. The Consortium won the bid, and on 28 January 1998 executed a Concession Contract with the Respondent for the performance of the Project.[1] A locally incorporated Argentine company, Puentes del Litoral S.A. ("**Puentes**", **"PdL"** or the **"Concessionaire"**), was created as required by the Concession Contract and began

[1] Claimant's Memorial, ¶ 47.

construction in late 1998.[2] The Claimant submits that it owns 26% of Puentes' stock and confirms having invested USD 33.2 million in the Project.[3]

6. The Claimant alleges that Argentina has failed to restore Puentes' "Concession Contract's economic balance following the enactment of the Emergency Law, has hindered the Claimant's investment to the point of complete loss, has ended the Concession Contract by using pretextual reasons and has failed to compensate Claimant and Puentes for the adverse economic effects of its unlawful conduct".[4] As a result, the Claimant contends that the Respondent breached several provisions under the BIT, in particular: (i) the fair and equitable treatment ("**FET**") standard (Article 2.2); (ii) the non-discrimination standard (Articles 2.2 and 3); and (iii) the obligation not to unlawfully expropriate an investment (Article 5).[5] The Claimant also invokes Article 7 of the US-Argentina BIT by way of the most-favored nation clause ("**MFN**") under the BIT (Article 3.1).[6]

7. The Respondent argues that its "actions showed full support and commitment to the works for the Rosario-Victoria physical connection […]. In spite of Concessionaire's breaches, the State maintained the Concession, until the time where PdL's shareholders decided to terminate such concession upon dissolution of Concessionaire. The abrupt

[2] Claimant's Memorial, ¶ 4.
[3] Request for Arbitration, ¶¶ 3, 20.
[4] Request for Arbitration, ¶ 4; Claimant's. Memorial, ¶ 168. Tr. Day 2: 142:18-22, 150:5-14.
[5] Claimant's Memorial, ¶ 177.
[6] Claimant's Memorial, ¶¶ 161-162. The Request for Arbitration identified a larger number of claims than were ultimately set forth in the Memorial (¶ 10): "Argentina has breached at least the following obligations and standards of conduct with respect to Salini Impregilo's investment: Investments by investors of one of the Contracting Parties shall not be nationalized, expropriated, seized or otherwise appropriated, either directly or indirectly, through measures having an equivalent effect in the territory of the other Party, unless the following conditions are complied with: the measures are taken for a public purpose, in the national interest or for security; they are taken in accordance with due process of law; they are non-discriminatory or not contrary to any commitments undertaken; and they are accompanied by provisions for the payment of prompt, adequate and effective compensation; Each Contracting Party shall always accord fair and equitable treatment to the investments made by the investors of the other Contracting Party; Each Party shall observe any obligations it may have entered into with regard to investments; Neither Party shall impair by unjustified or discriminatory measures, the management, maintenance, enjoyment, transformation, cessation or disposal of investments made in its territory by the other Contracting Party's investors; Each Contracting Party shall, in its own territory, accord to investments made by investors of the other Contracting Party, to the returns and activities related thereto and to any other matter regulated by this Agreement, a treatment not less favorable than that accorded to its own investors or to investors of third countries; Investment shall at all times ... enjoy full protection and security and shall in no case be accorded treatment less than that required by international law; and Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations." (Footnotes omitted)

alteration in the economic and financial balance of the Contract was a result of financing problems faced by Concessionaire and its shareholders, not attributable to the State, prior to the outbreak of the crisis in late 2001 and the adoption by the State of emergency measures to counteract such crisis […]. Also, the financing difficulties faced by Concessionaire and its shareholders, prior to the crisis and the emergency measures, were the factor leading PdL to file for insolvency proceedings in order to avoid being adjudged bankrupt as petitioned by its subcontractors".[7] As a result, the Respondent asks the Tribunal to reject the Claimant's claims.

## II. POST-DECISION PROCEDURAL HISTORY

8. On 3 March 2023, the Tribunal issued a Decision on Liability and Directions on Quantum (the "**Decision on Liability**"). The full text of the Decision on Liability as well as of the Tribunal's Decision on Jurisdiction and Admissibility dated 23 February 2018 are hereby made an integral part of this Award. Capitalized terms used in this Award shall have the same meaning as are ascribed to them in the Definition. The Tribunal refers to Section II of the Decision on Liability for the prior procedural history, and to Section III also of that Decision for the factual background of the case.

### A. DECISION ON LIABILITY

9. In the Decision on Liability, the Tribunal concluded, unanimously, that:

> (1) "Webuild's claims with respect to its Shareholder Loans are admissible;
>
> (2) Argentina has violated Article 2.2 of the BIT, first sentence, the obligation to give fair and equitable treatment to investments covered by the BIT, through its failure by September 2006, after the end of the economic emergency, to reestablish the economic equilibrium of the Concession as required by the Concession Contract and the Emergency Law;
>
> (3) Argentina has also violated Article 2.2 of the BIT, second sentence, by its unjustified conduct in failing to reestablish the

[7] Respondent's Counter-Memorial, ¶ 8.

economic equilibrium of the Concession within a reasonable time after the end of the economic emergency;

(4) In light of the Tribunal's decision relating to Article 2.2 (first and second sentences), no decision needs be reached by the Tribunal on the discrimination claims raised by the Claimant under Articles 2.2, 3 and 4, or the expropriation claim raised by the Claimant under Article 5, of the BIT;

(5) Argentina's defense of necessity is denied;

(6) With respect to damages as a consequence of the breaches noted above, no final decision on the quantum of damages and interest to be awarded is made at this time, with such decision being deferred to the Award following further submissions of the Parties on the questions set forth in subsection B of this section and further deliberations of the Tribunal. The Tribunal has determined that the Chorzów Factory standard of full reparation, using an income method, calculated on the basis of free cash flow to the firm, shall be used to calculate damages, including historical damages from September 2006 to the Valuation Date of 31 August 2014, and future damages from that date to the end of the Concession; and,

(7) The Tribunal reserves any decision on costs for the final Award in these proceedings."[8]

## B. DIRECTIONS ON QUANTUM

10. The Tribunal instructed the Parties (or a Party, as indicated) to prepare revised calculations of damages consistent with the Decision on Liability on the following bases:

a. *"Toll Rates.* Initial toll rates should correspond to those set forth in the 2006 LOU, which by its terms was aimed at a partial restoration of the Concession's equilibrium. Readjustment of rates after the initial period set by the 2006 LOU shall be done on an annual basis consistent with the indices and 5% threshold specified in that LOU (based on paragraph 390 above).

b. *Toll Subsidy.* The revised calculations of damages shall include a figure showing the impact of termination of any toll subsidy included in the 2006 LOU after 2012 versus the continuation of such subsidy until the end of the Concession (based on paragraphs 393 to 396 above).

[8] Decision on Liability, ¶ 438.

c. *Elasticities.* The revised calculation of damages should be based on three different assumptions regarding elasticity values: one at the low end of the envelope of values put forward by Mr. Bates in the *Hochtief* Arbitration; one at the high end; and one at the midpoint. Given the Tribunal's finding of greater inelasticity of demand for heavy rather than light traffic, the values in each calculation should reflect this differential, using the same degree of differential as reflected in Table 9 set forth in paragraph 399 above.

d. *Rate of Return.* The Claimant is also requested to clarify to what extent, if any, future cash flows in any calculation of damages are based on an IRR in excess of 8.87% and, to the extent that may be the case, to provide an additional calculation based on an IRR of no greater than 8.87%, along with a calculation using an IRR of 9.18% (or such other rate as may result from the new calculation of damages requested by this Decision), taking into account any variations caused by actual performance), so that the effect of any higher rate that the Claimant's experts consider historical performance may justify is clear, as set out in paragraphs 406 to 413 above.

e. *Working Capital: Current vs. Non-Current Assets and Duration of Tax Credit Carryover.* The Parties are requested to clarify the position regarding tax credit carryovers, as set forth in paragraphs 414 to 416 above. If such carryovers are limited in duration to five years under Argentine law, the revised calculations of damages shall be consistent with that limitation.

f. *Rate of Interest on the FAL.* To enable the Tribunal better to understand the treatment of the interest rate on the FAL in the "but-for" scenario, the Claimant is requested to confirm specifically the assumed rate of interest on the Financial Assistance Loan in that scenario. The Parties are also requested to confirm the Interest Rate for Loans to Leading Companies in the 25th percentile as published by the Argentine Central Bank, as referenced in Section 9 of the 2006 LOU. Assuming the 2006 LOU provisions have been correctly applied, the FAL rate reduction shall be unchanged from the earlier calculations performed by Claimant's experts. If, however, that rate has not been correctly applied, a new calculation shall be performed using the correct rate based on the 2006 LOU (paragraphs 417 to 421 above).

g. *Rate of Interest on Shareholder Loans and Additional Shareholder Loans.* The assumed rate of interest on shareholder loans (including the Shareholder Loans) shall be unchanged from the earlier calculations performed by those experts. No additional shareholder loans shall be assumed to have been made in the "but-for" scenario (paragraphs 422 to 426 above).

h. *Effect of Debt Overhang from Pre-Operation Phase.* The Claimant is requested to clarify the extent to which, if any, in the "but-for" scenario there existed a debt overhang from the construction phase (whether to subcontractors such as Boskalis-Ballast, shareholders or Argentina under the FAL) that would presumably not have been present absent the cancellation of the IDB Loan and the effects of the economic emergency on Puentes' ability to retire such debt, and the impact any such overhang might have on the revenues Puentes would be required to earn in order to achieve the targeted IRR in that scenario (paragraph 368 above).

i. *Other.* Except as set forth herein, all other assumptions in the calculation of damages in the "but-for" scenario shall remain unchanged.

j. *Interest Rate on Historical Losses.* Historical losses are to be calculated using a risk-free standard commercial rate of interest on or around the Valuation Date. The Tribunal invites further submissions from the Parties as to what a non-risk-based normal commercial rate around the Valuation Date in 2014 would have been. A short-term instrument such as a one-year U.S. Treasury bill would appear to be inapposite for a long-term investment and in light of the standard of a commercial rate of interest; the Parties should therefore consider rates based on instruments of longer tenor, *e.g.*, five or ten years. Alternative calculations should be provided using the chosen rates (paragraph 432 above).

k. *Discount Rate for Future Losses.* The discount rate for future projected losses shall continue to be the WACC (paragraph 433 above).

l. *Compounding.* Interest shall be compounded annually (paragraph 437 above)."[9]

11. In addition, the Tribunal requested answers to the following questions from the Parties (or a Party, as indicated):

a. *"Current Legal Status of Puentes.* The Claimant is invited to clarify the current status of Puentes, including whether its dissolution is complete, and if so, the date on which that dissolution occurred. If any liquidating distributions were made to shareholders, these should be identified, by shareholder. The Claimant and the Respondent are also invited to provide information on the current status of the two domestic court cases pending at the time of the submissions in this case.

[9] Decision on Liability, ¶ 439.

> b. *Subcontractor and Other Repayments.* The Claimant is also invited to confirm: (1) that all subcontractors are fully repaid in its "but-for" scenario, and to specify the timing of such repayment(s); and (2) to provide current information regarding any repayments of Shareholder Loans (including to Webuild) or third parties, including but not limited to subcontractors, that have been made pursuant to the reorganization plan, to the extent the record is not up to date, or to confirm that the record fully reflects such repayments.
>
> c. *Effect of Reduction of Interest Rate on Shareholder Loans.* The Claimant is requested to confirm that the Tribunal's reading of paragraph 140 of the Second BRG Report is correct in considering that the word "increase" should be "decrease" (and if not, to clarify the position on the issue discussed in paragraphs 422-426 above).
>
> d. *Double Recovery Issues. To avoid double recovery, the* Claimant is also requested to confirm the status of any recovery it or its shareholders have received from any claims it has pursued in Argentine courts, and to indicate the status of any such proceedings."[10]

12. Finally, the Respondent was requested to "provide any information that the Claimant may reasonably require to respond to the Tribunal's requests" and both Parties were "encouraged to work together to provide joint or agreed responses to these questions" within sixty days of the Decision on Liability. [11] Alternatively, if they could not reach agreement on the calculations, the Parties had to "note any areas of disagreement in their joint submission, or make separate simultaneous submissions". [12]

## C. EXTENSION OF TIME LIMITS

13. In its letter of 15 March 2023, the Respondent indicated that its valuation experts Melani Machinea and Ernesto Schargrodsky would not be available to start working on the revised calculations of damages consistent with the bases provided by the Tribunal in its Directions on Quantum within sixty days of the Decision on Liability. Therefore, "considering the extensive volume of work ahead, the time required to complete the administrative procedure for retaining the experts, their unavailability within the indicated time period, as well as [the Office of the Treasury Attorney General's]

[10] Decision on Liability, ¶ 440.
[11] Decision on Liability, ¶¶ 441-442.
[12] Decision on Liability, ¶ 442.

previously scheduled commitments during the months of April and May", the Argentine Republic requested the Tribunal to extend the time limit for the new submission until 16 June 2023.

14. In its email of 21 March 2023, the Claimant rejected Argentina's proposal, arguing that "it contradicts the Tribunal's directions, is an attempt to use the process as an impermissible appeal, is inefficient, and seeks to delay the issuance of the final award." The Claimant indicated its preparedness to work with Argentina to provide the Tribunal with a joint submission within sixty days of the Decision on Liability but also indicated it would not object to a 2-week extension, *i.e.*, until 17 May 2023.

15. In its Letter of 27 March 2023, the Tribunal decided, first, to give the Parties an extension of 30 days, *i.e.*, until 2 June 2023, which it considered "to be sufficient to overcome the difficulties listed by the Respondent, while also not unduly risking inefficiency and delay of the issuance of the final award".[13] Secondly, the Tribunal agreed with the Claimant that "it would be more efficient for the Parties' respective experts to be able to communicate and identify the areas of agreement and disagreement at the outset of their work". In particular, the Tribunal found the Claimant's suggested protocol reasonable:

> - That the Parties authorize their respective experts to communicate with each other, without prejudice, to discuss a workplan and prepare the revised calculations per the Tribunal's instructions (including identifying areas of agreement and disagreement).
>
> - That the experts be allowed to communicate with the respective Party who appointed them as experts to provide regular updates and information on the progress of the calculations.

Thirdly and finally, the Tribunal reiterated that it was asking for answers to targeted questions based on a decision regarding the appropriate methodology, so it requested the Parties to ensure that the submissions were limited to those questions.

[13] Letter of 27 March 2023, p. 1.

16. On 31 May 2023, the Parties requested a further extension of the deadline for the Parties' experts to submit a joint valuation model.

17. On 9 June 2023, the Respondent submitted: (i) a joint valuation model of BRG and experts Melani Machinea and Ernesto Schargrodsky ("**Joint Updated Valuation Model**"); (ii) a joint table reflecting a summary of the position of BRG and experts Melani Machinea and Ernesto Schargrodsky; (iii) the Expert Report of Melani Machinea and Ernesto Schargrodsky dated 8 June 2023; (iv) the Argentine Republic's submission in response to the Tribunal's questions and instructions in the Decision on Liability ("**Respondent's Post-Decision on Liability Brief**"); and (v) a list of the exhibits and legal authorities referred to in the Expert Report of Machinea and Schargrodsky and in the Argentine Republic's submission.

18. On the same date, the Claimant submitted (i) its response to the questions raised by the Tribunal in its Decision on Liability ("**Claimant's Response to Tribunal's Instructions on Quantum**" or "**Claimant's Post-Decision on Liability Response**"), and (ii) BRG's supplementary expert report entitled "BRG's Implementations of the Directions on Quantum" by Daniela Bambaci and Santiago Dellepiane.

19. On 27 June 2023, the Respondent filed the English translation of the Post-Decision on Liability Valuation Report prepared by experts Melani Machinea and Ernesto Schargrodsky dated 8 June 2023, and of the Post-Decision on Liability Brief of the Argentine Republic dated 9 June 2023, together with a corrected version of the Respondent's *Escrito de la República Argentina Posterior a la Decisión sobre Responsabilidad*, with corrections to minor clerical errors marked in the text.

20. On 14 September 2023, the Centre requested each Party to make an additional advance payment of USD 70,000.00 to ICSID, which in accordance with ICSID Administrative and Financial Regulation 16 had to be made within 30 days (*i.e.*, by 14 October 2023). On 22 September 2023, the Centre acknowledged receipt of the Claimant's payment.

21. On 17 October 2023, the Respondent filed a communication claiming violations of due process and of its right to be heard, reserving its right to raise the corresponding grounds

for annulment in the terms of Article 52 of the ICSID Convention once the Award has been rendered.

22. On 19 October 2023, the Tribunal invited the Claimant to comment on the Respondent's communication of 17 October 2023 within 10 business days from receipt of the English courtesy translation (provided on 20 October 2023).

23. On 24 October 2023, the Centre invited the Respondent to inform on the status of its outstanding payment by 27 October 2023, which they did the same day. Subsequently, on 10 November 2023, the Centre requested the Respondent to indicate the date when the Centre should be receiving Argentina's payment of the 4th advance requested by letter of 14 September 2023.

24. On 30 October 2023, the Claimant filed its comments on the Respondent's communication of 17 October 2023, categorizing Argentina's conduct as "despicable, and an unmistakable sign of opportunistic behavior in light of the imminent final award to be rendered against it."

25. On 15 November 2023, the Claimant informed the Tribunal that to avoid further unnecessary delays in the case it was prepared to pay Argentina's share of the requested advance payment, requesting the Tribunal to "allow Webuild to pay Argentina's share of the advance and either: (i) reimburse Webuild the advance payment if Argentina finally makes that payment before the final award is rendered; or (ii) include the amount advanced by Webuild as part of the costs award against Argentina."

26. On 17 November 2023, the Respondent provided an update on the status of its outstanding payment, indicating that it was in no capacity to provide a precise date when it would take place.

27. In light of the above, on 30 November 2023, in accordance with ICSID Administrative and Financial Regulation 16, the Centre notified the Parties of the Respondent's default, inviting either Party to pay the outstanding amount of USD 70,000.00 within 15 days (*i.e.*, by 15 December 2023).

28. On 20 December 2023, the Centre acknowledged receipt of a wire transfer in the amount of USD 70.000,00 from the Claimant, corresponding to the Respondent's portion of the advance requested in the Centre's letters of 14 September 2023 and 30 November 2023, which had been credited to the trust fund established for this case.

29. On 18 April 2024, the Tribunal informed the Parties that while it was in the process of drafting its Award, and having deliberations on the same, the Tribunal would find it useful to have the Claimant's comments on the Respondent's requests in its 9 June 2023 submission concerning the local proceedings in connection with the risk of double recovery under paragraph 117(c), (d), (e), and (f) of that submission. The Claimant was requested to file this submission by 26 April 2024.

30. Also on 18 April 2024, the Respondent requested leave from the Tribunal to respond to the Claimant's comments on the matter concerning the risk of double recovery.

31. On 19 April 2024, the Tribunal granted leave to the Respondent to reply to the Claimant's comments by 7 May 2024, giving the Claimant the opportunity to respond, if it so wished, to the Respondent's reply by 15 May 2024.

32. As scheduled, (i) on 26 April 2024, the Claimant filed its comments on the Respondent's requests concerning the local proceedings in connection with the risk of double recovery under paragraph 117(c), (d), (e), and (f) of the Respondent's submission of 9 June 2023; and (ii) on 7 May 2024, the Respondent filed its response. Subsequently, on 10 May 2024, the Claimant filed further comments on the matter.

33. On 31 May 2024, at the Tribunal's request, the Parties filed their respective statements of costs, updating their previous submissions of 12 March 2021.

34. On 1 July 2024, the Respondent filed a request for the admission of new evidence: a judgment rendered on 27 June 2024 by the Argentine Federal Court on Administrative-Contentious Matters No. 8: case 25047/2014, entitled "*Puentes del Litoral S.A. c/Ministerio de Planificación s/Proceso de Conocimiento*" (the "**PdL Case**") (the "**PdL Judgment**" or "**Local Judgment**"), rejecting PdL's claim for annulment of Resolution DNV No. 1994/2014, and rejecting all other claims and amendments in that case.

35. On 2 July 2024, the Claimant objected to the Respondent's request, but stated that if the Tribunal were to permit the incorporation of the PdL Judgment, the Tribunal should also allow the Respondent to file a short submission, to be followed by the Claimant's response, with no further submissions.

36. On the same date, the Tribunal informed the Parties that it would allow one round of submissions: the Respondent was to file a copy of the PdL Judgment together with a submission not to exceed 10 pages, by 9 July 2024, and the Claimant, if it so wished, was to file a response with the same page limit by 16 July 2024. By communication of the same date, the Respondent stated that it reserved its rights to request an opportunity to file observations on the Claimant's response. Subsequently, at the Parties' request, the Tribunal extended those deadlines by one day, in light of a national holiday in Argentina.

### D. DECISION ON RECONSIDERATION

37. On 10 July 2024, the Respondent filed a submission on the PdL Judgment's impact in this arbitration, together with the PdL Judgment, as Exhibit **A RA-0645**, and Legal Authorities **AL RA-059, AL RA-0201**, **AL RA-0398**, and **AL RA-0405** to **AL RA-0411**. The Respondent's submission, styled "Argentine Republic's Submission on the Implications of the PdL Judgment", included a request on the basis of the PdL Judgment for the Tribunal to revise its Decision on Liability (the "**Request for Reconsideration**").

38. On 19 July 2024, the Claimant filed a response to the Respondent's Request for Reconsideration, styled "Claimant's Response to the Argentine Republic's Request for Reconsideration of the Decision on Liability," together with Exhibits **C-0461** to **C-0463** in English and Spanish, and Legal Authorities **CL-0254** to **CL-0260** (the "**Claimant's Response on Reconsideration**").

39. On 23 July 2024, having considered the Parties' positions and requests, and after due deliberation, the Tribunal notified the Parties of its decision to authorize a second round of sequential submissions, and provided instructions to such effect. The Respondent's submission would be due by 31 July 2024, and the Claimant's by 7 August 2024.

40. As scheduled, on 31 July 2024, the Respondent filed its reply on the Request for Reconsideration, styled "Reply of the Argentine Republic on the Implications of the Judgment in the PdL Case (the "**Respondent's Reply on Reconsideration**"), with the English version following on 6 August 2024.

41. On 7 August 2024, the Claimant filed the rejoinder to Argentina's Reply, styled "Claimant's Surrebuttal to the Argentine Republic's Request for Reconsideration of the Decision on Liability" (the "**Claimant's Surrebuttal on Reconsideration**").

42. On 25 September 2024, the Tribunal issued a Decision on the Respondent's Request for Reconsideration ("**Decision on Reconsideration**"), rejecting the application and indicating it would assess costs against the Respondent in relation to the application. The full text of the Decision on Reconsideration is hereby made an integral part of this Award. The Claimant was given fifteen days to submit a supplemental statement of costs in relation to the application.

## E. UPDATED SUBMISSIONS, UNDERTAKING AND FINAL ADVANCE PAYMENTS

43. On 10 October 2024, the Claimant filed an updated cost submission, and on 16 October 2024, the Respondent filed observations to that submission.

44. On 17 October 2024, the Tribunal (i) provided directions to the Parties for an updated Joint Valuation Model; and (ii) gave the opportunity to the Respondent, to update, if it so wished, its submission on costs by 25 October 2024. This was followed by the Respondent's extension request of 21 October 2024, and the Claimant's response of the same date.

45. On 22 October 2024, the Tribunal extended the deadline for the Parties' experts to submit the updated Joint Valuation Model by 28 October 2024, and provided directions to the Respondent for the filing of an updated statement of costs, and a subsequent submission on costs. The Tribunal also directed the Parties to refrain from making any further submissions unless specifically requested by the Tribunal.

46. On 25 October 2024, the Respondent filed an updated statement of costs.

47. On 28 October 2024, by separate emails, each of the Parties filed their experts' updated Joint Valuation Model. The Claimant additionally filed a letter of the same date with certain arguments concerning interest, to which the Respondent objected. On 30 October 2024, the Tribunal informed the Parties that it had decided to disregard the Claimant's letter of 28 October 2024 in light of the Tribunal's directions of 22 October 2024.

48. On 8 November 2024, (i) the Respondent filed an updated submission on costs, together with legal authorities **AL RA-412** to **AL RA -414**; (ii) the Centre requested the Parties to make a final advance payment; and (iii) the Tribunal invited the Claimant to submit, within ten (10) days (*i.e.,* by 18 November 2024), a written undertaking with respect to the issue of double recovery ("**Undertaking**"), consistent with its prior submissions. Subsequently, at the Claimant's request, the Tribunal extended the deadline for the filing of the Undertaking until 21 November 2024, when the Claimant's Undertaking dated 18 November 2024, was filed.

49. On 25 November 2024, the Respondent requested leave from the Tribunal to briefly comment on the Claimant's Undertaking by 29 November 2024, which was granted on 26 November 2024. Accordingly, on 29 November 2024, the Respondent filed its observations on the Claimant's Undertaking ("**the Respondent's Observations**").

50. On 5 December 2024, the Claimant offered to respond to the Respondent's Observations ("**the Claimant's Offer**"). On the same date, the Tribunal (i) acknowledged receipt of the Claimant's Undertaking, the Respondent's Observations, and the Claimant's Offer; (ii) directed the Claimant to make certain changes to the Undertaking, and to provide a revised version by 13 December 2024; and (iii) rejected the Claimant's Offer noting that the Tribunal did not wish to receive nor needed a further round of submissions on the subject. Finally, the Tribunal informed the Parties that any other related matters would be addressed in the Award, and reiterated that given the advanced stage of the Award drafting, the Parties were to refrain from making further submissions unless expressly directed by the Tribunal.

51. On 13 December 2024, the Claimant filed a revised Undertaking ("**Revised Undertaking**") stating as follows:

> "Claimant, Webuild S.p.A., in accordance with the Tribunal's instruction dated November 8, 2024, for Claimant to formalize its prior representations to the Tribunal that it will not seek double recovery of damages, hereby complies with the request as follows:
>
> Webuild S.p.A., through Dr. Pietro Salini, its Chief Financial Off[ic]er, hereby undertakes:
>
> - To not seek double recovery; that is, we will not collect in any local proceeding any damages that, taking into account the nature of the claims and the relevant measure of damages, would represent double recovery, in whole or in part with the damages Claimant collects as part of the damages awarded in this arbitration (ICSID Case No. ARB/15/39).
> - To reaffirm its commitment that it will not seek double recovery of any damages granted in the upcoming Award and will remain available to attempt to work with the Argentine Republic to mutually resolve any remaining concerns once the Argentine Republic fulfills its own legal duty to pay the upcoming Award."

52. Subsequently, on 18 December 2024, the Tribunal directed Claimant to "confirm in writing its understanding that any third party that might acquire any right in the Award subsequent to its issuance would be notified in writing of the undertaking by the Claimant and provided with a copy of it, and further notified in writing of its understanding that such third party would be bound by the undertaking to the same extent as the issuing party with respect to any issues of double recovery," by 2 January 2025. On 3 January 2025, the Claimant requested an extension of this deadline until 17 January 2025, which was granted on 6 January 2025.

53. With regard to the final advance payment requested by the Centre on 8 November 2024, on 5 December 2024, the Centre acknowledged receipt of the Claimant's share of the requested payment. On 12 December 2024, the Centre invited the Respondent to inform on the status of its payment. On 18 December 2024, the Respondent replied that "as ICSID had been informed on previous occasions, in the economic, financial, fiscal, administrative and social circumstances prevailing in the Argentine Republic, payments of advances of funds had been suspended, in view of which Rule 16 of the ICSID Administrative and Financial Regulations would be applicable" (Tribunal's

translation).[14] On the same date, the Secretary of the Tribunal, on behalf of the Secretary-General of ICSID, notified both Parties of the default, and gave them the opportunity to pay the outstanding amount of USD 30,000.00 within 15 days (*i.e.*, by 2 January 2025). On 13 January 2025, the Claimant (i) informed the Tribunal that it had paid the Respondent's share of the advance funds (*i.e.*, USD 30,000.00) in accordance with the default letter of 18 December 2024; (ii) noted that the Claimant was, once more, paying the Respondent's share of advance costs in good faith to avoid further unnecessary delays in this case; and (iii) requested the Tribunal to include in the Award the amounts that the Claimant has advanced as part of the costs award against Argentina. On 15 January 2025, the Centre confirmed having receipt the Claimant's default payment of USD 30,000.00.

54. By letter dated 13 January 2025, the Claimant filed the Confirmation Understanding requested by the Tribunal on 17 December 2024, stating as follows:

> "Claimant, Webuild S.p.A., in accordance with the Tribunal's instruction dated December 18, 2024, hereby confirms its understanding that any third party that might acquire any right in the Award subsequent to its issuance would be notified in writing of the undertaking by the Claimant and provided with a copy of it, and further notified in writing of Webuild's understanding that such third party would be bound by the undertaking to the same extent as the issuing party with respect to any issues of double recovery."

55. On 17 January 2025, the Tribunal declared the proceedings closed pursuant to ICSID Arbitration Rule 38. Subsequently, on 11 February 2025, the Respondent informed of the appointment of the new *Procurador del Tesoro de la Nación de la República Argentina*.

[14] Respondent's communication of 18 December 2024, stating: "*[c]omo se ha informado al CIADI en oportunidades anteriores, en las circunstancias económicas, financieras, fiscales, administrativas y sociales imperantes en la República Argentina, se han suspendido los pagos de anticipos de fondos, en vista de lo cual es aplicable la Regla 16 del Reglamento Administrativo y Financiero del CIADI*."

# III. FINAL DECISIONS ON QUANTUM

## A. RESPONSES OF THE PARTIES TO THE TRIBUNAL'S QUESTIONS

### (1) Current Legal Status of Puentes, the Reorganization Proceedings, and the Other Domestic Litigation

56. The Parties appear to be in agreement about the current status of Puentes. The Claimant states that Puentes' dissolution has not yet been completed, that Puentes' reorganization proceeding is ongoing, and that Argentina's failure to comply with the First Transitory Agreement has prevented Puentes from being able to fully comply with the Creditor Settlement Agreement.[15]

57. The Respondent notes that, on 30 June 2014, it was resolved at the Annual and Special Shareholders' Meeting of Puentes to "unanimously: (i) declare the Company dissolved pursuant to Art. 94 (5) of the [Argentine] Companies Law, the Company being thus subject to liquidation proceedings [...]."[16] However, Puentes continues to be subject to liquidation proceedings and no liquidation remainders have been distributed to the shareholders. It is unclear at the time of this Award when such proceedings may be concluded and whether there will be in fact any such distributions. The ongoing reorganisation proceedings are entitled "Puentes del Litoral S.A. s/ concurso preventivo" (File No. 20328/2007, pending before Commercial Trial Court No. 13 in and for the City of Buenos Aires, Clerk's Office No. 26).[17]

58. As far as Puentes' lawsuit to request the annulment of the rescission of the Concession Contract due to Argentina's failure to re-establish its economic equilibrium is concerned: as stated above, on 27 June 2024, the Federal Court on Administrative-Contentious Matters No. 8 rendered its judgment, rejecting PdL's claim for annulment of Resolution DNV No. 1994/2014 as well as all other claims and amendments in that case.

[15] Claimant's Post-Decision on Liability Response, I(A), pp.1-2.
[16] Respondent's Post-Decision on Liability Brief, ¶ 58 (Footnotes omitted).
[17] Respondent's Post-Decision on Liability Brief, ¶ 59 (Footnotes omitted).

59. At a time when the first instance case was still pending, the Respondent recalled that "the State holds claims in PdL's reorganisation proceedings, and has requested the allowance of such claims on account of PdL's failure to comply with the Concession Contract, the FAL, expropriations, penalties, and interest on penalties. The ancillary proceeding for allowance of the State's claims is now suspended by virtue of the court case commenced by PdL for the termination of the Concession Contract. In this respect, the court overseeing the reorganisation proceedings has decided that it will not render a decision on the allowance of the State's claims 'until a final judgment has been issued [in the case brought by PdL against the Argentine State].'"[18] The Tribunal has received no indication of any change in this position.

60. In these proceedings, the Respondent is requesting the Tribunal:

> a. "to reduce any compensation payable to Claimant taking into account the effect of PdL's debt overhang from the pre-operation phase, as it is not attributable to the Argentine Republic;
>
> b. to bear in mind that repayment to the subcontractors in the but-for scenario could not have been achieved through the 2006 Letter of Understanding;
>
> c. to order Webuild to cause the termination of the local proceeding styled "Puentes del Litoral S.A. c/EN. M. Planificación IP y s/Proceso de Conocimiento," File No. 25047/2014, pending before Federal Contentious Administrative Trial Court No. 8, and to waive any and all rights in connection with such court case;
>
> d. to order Webuild to assign to the Argentine Republic its claims, and those of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, as allowed in the reorganisation proceedings styled "Puentes del Litoral S.A. s/ concurso preventivo," File No. 20328/2007, pending before Commercial Trial Court No. 13, Clerk's Office No. 26, in their current status, and that it be deprived of any rights under the Award to be issued by the Tribunal in the event it breaches, frustrates or otherwise circumvents compliance with, this condition;
>
> e. to order Webuild to assign to the Argentine Republic the right to any amounts that may be determined as a liquidation remainder of PdL that Webuild may be entitled to by virtue of its shareholding in PdL, as well as that of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, in their current

[18] Respondent's Post-Decision on Liability Brief, ¶ 60 (Footnotes omitted).

> status, and that it be deprived of any rights under the Award to be issued by the Tribunal in the event it breaches, frustrates or otherwise circumvents compliance with, this condition;
>
> f. to order Webuild to carry out the above-mentioned assignments with all of the necessary validity requirements under Argentine law so as to render them enforceable against third parties;
>
> g. not to modify the rate of the FAL contemplated in Resolution 14 in the but-for scenario;
>
> h. to determine that the valuation date is the date on which the Tribunal found that the conduct in breach of Article 2.2 of the BIT took place, that is, September 2006;
>
> i. in the event the Tribunal decides not to modify the August 2014 valuation date, to adopt as the historical loss adjustment rate that of US five-year Treasury bills;
>
> j. to adopt for the calculation of interest on the amount of compensation it determines as of the valuation date the yield rate of US one-year Treasury bills; and
>
> k. for all purposes, to take into account and admit the arguments contained in this Post-Decision on Liability Brief and in Machinea and Schargrodsky's Third Report, as well as those in the Argentine Republic's prior written and oral submissions made in this proceeding, and the evidence submitted by it, at the time of issuing its Award." [19]

61. The Tribunal concludes that Parties would seem to be in agreement that Puentes' dissolution has not yet been completed, liquidation proceedings are ongoing and the distribution of any liquidation remainders to the shareholders has not yet taken place. Although Puentes' lawsuit to rescind the termination of the Concession Contract has now resulted in a judgment of the court of first instance, the Tribunal understands that further appeals are possible and that it may therefore not be final. The Tribunal thus needs to consider the implications of these ongoing proceedings on its Award, particular in relation to any potential for double recovery.

[19] Respondent's Post-Decision on Liability Brief, ¶ 117.

**(2) Subcontractor and Other Repayments**

62. With respect to the status of repayments to shareholders, subcontractors, and others assumed in the "but-for" scenario and made in fact pursuant to the reorganization plan, as to the first question, Webuild confirms that its damages model assumes that Puentes "repays all of its outstanding subcontractor debt in 2006 in the but-for scenario, after the economic equilibrium of the Concession is restored."[20]

63. The Claimant's experts explain that:

> "our valuation relies on the actual evolution of PdL's financing prior to the renegotiation. However, once the economic equilibrium of the Concession is restored, we assume PdL refinances its debt. In doing so, the company repays all of its outstanding subcontractor debt in 2006 in the but-for scenario, after the economic equilibrium of the Concession is restored. This debt is reported in the PdL's 2005 audited financial statements, as subcontractor debt is reported in its liabilities with a balance of ARS 70.6 million as of December 2005 which in our model is paid with cash flows produced in 2006." [21]

64. As to the status of repayments in fact under the reorganization plan, the Claimant states that the record is complete as to those matters, which it reconfirms as follows: "[t]he record is complete as to Puentes del Litoral's payments made under the Creditor Settlement Agreement to its shareholders, Boskalis-Ballast, and to Respondent for the Financial Assistance Loan."[22]

65. The Respondent and its experts submit that:

> "PdL's audited financial statements show that, as of 31 December 2005, PdL's debt to its subcontractors, which would not have been incurred if the company had complied with its obligation to timely obtain financing, accounted for 21.5 % of PdL's total liabilities as of that date."[23]
>
> "It should be noted that PdL's debt to its main subcontractors, i.e. Boskalis and Ballast Nedam, was incurred prior to Argentina's 2001

[20] Claimant's Post-Decision on Liability Response, II(F), p. 11.
[21] BRG's Implementations of the Directions on Quantum, ¶ 87.
[22] Claimant's Post-Decision on Liability Response, I(B), p. 2 (Footnotes omitted).
[23] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 96.

crisis. The evidence in this case shows that repayment of this debt was a condition for the 2006 LOU to come into force."[24]

"In its valuation model, BRG assumed that PdL's debt to the subcontractors would have been repaid in 2006 in the but-for scenario. However, in the Annual Report of PdL as of 31 December 2005, dated 9 June 2006, the Board of Directors informed the shareholders of the conditions of the 2006 LOU and explicitly warned them that, under such conditions, the debt owed to the subcontractors could not be repaid (…)." [details from report][25]

"In this regard, UNIREN informed that PdL 'alleged that the funds granted under the Letter of Understanding dated 6 May 2006 were not sufficient to repay the outstanding debts to its subcontractors, to repay the financial assistance to grantor and to comply with its other contractual investment obligations.'"[26]

"Therefore, the evidence in this case clearly shows that the funds obtained under the 2006 LOU would have not been sufficient for PdL to repay the debt owed to the subcontractors. We understand that, in April 2007, PdL was notified of a bankruptcy petition presented by Boskalis and Ballast Nedam in December 2005. As shown by the evidence, we may assume that would have also been the case in the but-for scenario, given the lack of funds to repay the debt."[27]

"The Joint Updated Valuation Model shows that cash flows for 2006 are negative. Negative initial cash flows would have required additional debt. Therefore, for purposes of the valuation model, the negative cash flows for 2006 result in a decrease in the value of equity."[28]

"[T]he evidence in the record confirms that during the renegotiation process PdL stated that the level of revenues envisaged in the 2006 Letter of Understanding would not allow it to face its debt commitments, including those relating to its subcontractors. For this reason, the Unit for Renegotiation and Analysis of Public Services Contracts ("UNIREN") had to seek and discuss with Concessionaire other alternatives that allowed the Concession to move forward harmoniously."[29]

"Along the same lines, on 9 June 2006 PdL's directors informed the company's shareholders that it was not possible to pay the debt to the subcontractors with the cash flows envisaged in the 2006 Letter of

[24] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 97.
[25] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 98.
[26] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 99.
[27] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 100.
[28] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 101.
[29] Respondent's Post-Decision on Liability Brief, ¶ 39.

> Understanding. This is not surprising if account is taken of the fact that the prior regularisation of PdL's debt to its subcontractors was precisely a condition for the 2006 Letter of Understanding to become effective, and the inability to regularise such situation resulted in the failure of the Letter of Understanding."[30]
>
> "The evidence shows that PdL had already received the funds to pay the subcontractors through the State subsidy it had requested in the bid; it is therefore totally illogical to assume that the 2006 Letter of Understanding should have contemplated additional funds for such purpose, as argued by Claimant's experts, who assume that PdL's debt to its subcontractors would have already been repaid in 2006 in the but-for scenario. This assumption, in addition to being wholly unsupported, contradicts the evidence showing the impossibility to repay that debt in the conditions envisaged in the 2006 Letter of Understanding."[31] [additional details on pending proceedings omitted]
>
> "It is worth recalling that, in accordance with the law applicable to the determination of damages identified by the Tribunal, reparation must 're-establish the situation which would, in all probability, have existed if th[e] [illegal] act had not been committed.' In this respect, assuming in the but-for scenario that PdL's debt to its subcontractors would have already been repaid in 2006 is not a situation which, in all probability, would have existed."[32]
>
> "With respect to item (2), Claimant's claim as a creditor of PdL has already been allowed in PdL's reorganisation proceedings and Claimant has collected so far a total of USD 6,779,863. Subcontractors Boskalis and Ballast Nedam have received a partial payment of their claim as allowed, up to instalment No. 8, having collected so far a total of USD 8,120,694." [33]

66. While the Parties' numbers regarding the status of repayments in the reorganization proceeding are not entirely consistent, it appears there have been no further repayments beyond those already reflected in the record.

67. The Parties disagree, however, as to the validity of the assumptions made by the Claimant's experts regarding repayments in the "but-for" scenario, with Respondent disputing in particular Puentes' ability to pay its subcontractors in the wake of the 2006

[30] Respondent's Post-Decision on Liability Brief, ¶ 40.
[31] Respondent's Post-Decision on Liability Brief, ¶ 41.
[32] Respondent's Post-Decision on Liability Brief, ¶ 44.
[33] Respondent's Post-Decision on Liability Brief, ¶ 45.

MOU. Its submissions in this regard are based on contemporaneous factual materials as well as the results of the Joint Updated Valuation Model.

68. The Tribunal will address this issue further in its assessment of the debt overhang issue in Section III.C(7) *infra,* and particularly in paragraphs 140 to 141.

**(3) Effect of Reduction of Interest Rate on Shareholder Loans**

69. In paragraph 440(c) of its Decision on Liability, the Tribunal asked Webuild "to confirm that the Tribunal's reading of paragraph 140 of the Second BRG Report is correct in considering that the word 'increase' should be 'decrease' (and if not, to clarify the position on the issue discussed in paragraphs 422-426 above)." The Claimant's experts clarify that the word "increase" in the Second BRG report is correct:

> "We confirm that the word '*increase*' in paragraph 140 of the second report is correct. As explained above and in our reports, we estimate damages to Claimant based on its equity stake and debt stake in PdL. For its equity stake in PdL, we estimate damages as the present value of PdL's expected historical and future free cash flows as of the Valuation Date. With regards to Claimant's debt stake in PdL, we estimate damages assuming that the outstanding debt in PdL's 2005 audited financial statements was rolled over every year until the valuation date, accruing interest estimated at our estimation of PdL's cost of debt, which is much lower than the 15% interest rate accruing as of 2005 on the shareholder loans.
>
> In their second report, MS [Machinea-Schargrodsky] argued that the original conditions of the shareholder loans would have been maintained in the but-for scenario, even after the reestablishment of the economic equilibrium of the Concession. Based on this assumption, MS estimated damages assuming a 15% pre-tax cost of debt in the calculation of the discount rate to compute the present value of future cash flows. And based on instructions to follow the *Hochtief* award, MS estimated no damages related to Claimant's debt stake in PdL in their reports.
>
> In Table 8 of our second report, we illustrated that when damages to Claimant's debt stake in PdL was considered, maintaining the shareholder's loan rate of 15% resulted in an overall *increase* in damages to Claimant as of the Valuation Date. As shown in Table 8, replicated as Figure 12 below, this assumption results in an overall *increase* in damages to Claimant from USD 174.2 million to USD 198.0 million, a USD 23.8 million *increase."* [34]

[34] BRG's Implementations of the Directions on Quantum, ¶¶ 90-92.

70. Moreover, the Claimant's experts argue that:

> "Following the Tribunal's instruction, our revised calculation of damages in the Joint Updated Valuation Model assumes that no additional shareholder loans are needed and that existing shareholders loans are renegotiated at commercial rates (measured by our estimation of PdL's cost of debt) once the economic equilibrium of the Concession is restored in 2006."[35]
>
> "As explained in our reports, and confirmed by the Tribunal's decision, we calculate damages to Claimant for both its equity and debt stakes in PdL."[36]
>
> "To estimate Claimant's equity stake, we subtract PdL's net debt as of the Valuation Date from PdL's but-for firm value, where:
>
> a. PdL's but-for firm value is equal to the present value of the future free cash flows to the firm;
>
> b. PdL's net debt as of the Valuation Date is equal to the net debt as of December 2005 plus compounded interest at PdL's annual cost of debt, ranging between 6% and 8%."[37]
>
> "The calculated net debt as of August 2014 is also the basis for our calculation of the Claimant's debt stake."[38]
>
> "These calculations assume that upon the resolution of the uncertainty regarding the restoration of PdL's economic equilibrium, PdL would have had access to lower long-term interest rates and would no longer have had to rely on loans from the shareholders. Indeed, the Tribunal concluded the same, stating:
>
> *"¶**423**. The Claimant's response to this criticism appears to be that in the "but-for" scenario, once economic equilibrium had been restored and the toll rates had been increased, the uncertainty surrounding the Project's financial viability would have been reduced, and other financing would have been available, enabling Puentes to rely less on shareholder financing (or at least be able to compel shareholders to reduce their interest rates). [...]*
>
> *¶**424**. Given the Tribunal's decision on admissibility of the Webuild Shareholder Loan claims, this change would therefore appear to*

[35] BRG's Implementations of the Directions on Quantum, ¶ 54.
[36] BRG's Implementations of the Directions on Quantum, ¶ 55.
[37] BRG's Implementations of the Directions on Quantum, ¶ 56.
[38] BRG's Implementations of the Directions on Quantum, ¶ 57.

> *benefit Argentina. It also appears to the Tribunal to be logical and reasonable.'"*"[39]

> "During the proceedings, Respondent's experts argued that PdL would require additional shareholder funds at their original interest rate of 15%. In our second report, we explained that this assumption led to an *increase* in overall damages, as Claimant's debt stake capitalized at a 15% rate resulted in greater damages for Claimants' debt stake than the reduction in Claimant's equity stake."[40]

> "In contrast to their prior proposals, MS now propose to recalculate PdL's cost of debt using the annual average 5-year U.S. Treasury rate. This is different to our proposal as well as their own proposal in prior presentations. This adjustment reduces damages from USD 174.2 million to USD 166.5 million, a USD 7.7 million decrease."[41]

> "This adjustment has no merit as, even after the renegotiation, PdL would not have been able to access debt at the same rate as the U.S. Treasury. Indeed, only the U.S. Treasury is able to finance itself at these rates. Had PdL been able to refinance its shareholder loans through commercial debt in the but-for scenario, PdL would have had access to financing in line with its cost of debt. MS's adjustment is also inconsistent with their own calculation of the rate at which PdL would obtain debt, which is 7.6% higher than the 2014 U.S. Treasury rate." [42]

71. The Respondent's experts claim that:

> "It is a basic principle of corporate finance that equity is more expensive than debt because shareholders bear a higher risk than creditors. The reasons for these higher costs/risks are, in particular, the following: (i) returns to shareholders are uncertain and not guaranteed; (ii) the possibility of dilution, loss of control, and loss of financial benefits as new shareholders join; (iii) the reduced rights of shareholders vis-à-vis creditors in the event of the company's bankruptcy or insolvency, as shareholders do not have a secure claim but are entitled to a contingent residual value; and (iv) dividends are not deductible for income tax purposes, while interest on debt is."[43]

> "[I]t is undeniable that the cost of equity (the expected return for shareholders) always exceeds the cost of debt (expected return for lenders) because the risk to shareholders is greater than to lenders. Particularly, the higher the percentage of the firm's indebtedness the higher the cost of equity: as creditors take priority of payment over

[39] BRG's Implementations of the Directions on Quantum, ¶ 58.
[40] BRG's Implementations of the Directions on Quantum, ¶ 59.
[41] BRG's Implementations of the Directions on Quantum, ¶ 60.
[42] BRG's Implementations of the Directions on Quantum, ¶ 61.
[43] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 67.

shareholders, the higher the firm's percentage of debt, the higher the returns required by shareholders to compensate for the greater risk assumed."[44]

"The Tribunal established that it was not appropriate to update at a risk-adjusted rate, particularly the WACC used by BRG, the historical losses associated with the claim for damages brought by Claimant as shareholder until the valuation date. As debt is always less risky than equity due to the former's priority of payment, based on the same rationale, it would not be appropriate to update at a risk-adjusted rate Webuild's debt up to August 2014 for the purposes of calculation of damages to Claimant as creditor."[45]

"In line with the Tribunal's logic, under which the historical losses of Webuild as shareholder until the valuation date shall be adjusted at a risk-free standard commercial rate of interest, in our opinion, Webuild's debt as of December 2005 should be adjusted to the valuation date following the same approach."[46]

"Using any risk-adjusted rate to update Webuild's outstanding debt as of 2005 to the valuation date, such as BRG's estimated cost of debt, which includes not only the industry default premium but also the country risk premium, would contradict the Tribunal's own instruction to update Claimant's historical damages as shareholder at a risk-free rate."[47]

"As a result of updating Webuild's debt as of December 2005 at the same rate we used to adjust historical cash flows for the calculation of damages as shareholder, *i.e.*, the yield on the 5-year US Treasury bonds, capitalized annually, damages to Webuild as a creditor amount to USD 35.4 million as of August 2014."[48]

"We find that BRG's method of calculating damages to Webuild as creditor, which consists in updating Webuild's outstanding 2005 debt as reported in PdL's audited financial statements, converted to US dollars, at the cost of debt estimated by BRG, that is, a risk-adjusted interest rate, is contrary to the Tribunal's instruction to update historical damages as shareholder at a risk-free rate, because debt is always less risky than equity. This sensitivity is reflected in the Joint Updated Valuation Model." [49]

[44] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 68.
[45] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 69.
[46] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 70.
[47] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 71.
[48] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 72.
[49] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 73.

72. The Tribunal will address this issue further in Section III.C.(7) of this Award, *infra.* It appreciates the Respondent's experts' explanation, and considers that it provides additional support for the "but-for" scenario's assumption that the interest rate on shareholder debt would be reduced to a market rate rather than maintained at the 15% rate in that scenario. What that market rate should be, however, is a completely distinct question from the question of what interest rate should apply to historical damages, as well as pre- and post-Award damages. The Tribunal considers a market rate assumption regarding the interest rate on this debt in the "but-for" scenario to be reasonable and appropriate.

**(4) Double Recovery**

73. The Tribunal's final question to the Parties related to potential double recovery issues, and specifically asked for information regarding any recovery Puentes or its shareholders had received from any claims pursued in the Argentine courts. Other than the payment of initial instalments under the Creditor Settlement Agreement before Argentina's failure to comply with the First Transitory Agreement,[50] the Claimant submits that Puentes' shareholders, including Webuild, have not recovered from any claims pending in Argentine courts.[51]

74. The Respondent argues:

> "[T]he prohibition of double recovery on account of the same loss is a well- established principle that has been recognised by numerous arbitral tribunals. (…)"[52]

> "Taking into account the different alternatives adopted in the above-mentioned cases, it can be concluded that the appropriate measures to minimise the risk of double recovery will depend on the facts of each case and the degree of progress of the international arbitration proceeding vis-á-vis the local proceedings."[53]

> "The following difficulties are present in the instant arbitration proceeding:

[50] See ¶ 57 *supra*.
[51] Claimant's Post-Decision on Liability Response, I(B), p. 4 (Footnotes omitted).
[52] Respondent's Post-Decision on Liability Brief, ¶ 47 (Footnotes omitted).
[53] Respondent's Post-Decision on Liability Brief, ¶ 52.

i. PdL is subject to ongoing reorganisation proceedings;

ii. the court overseeing PdL's reorganisation proceedings allowed Webuild's (formerly Salini Impregilo) claims and Claimant has indeed collected its claims in a partial manner;

iii. PdL brought an action for damages against the Argentine State in the local courts on account of the termination of the Concession Contract —this is an ongoing proceeding which is at an advanced stage, as it only remains for the parties to produce lesser evidence, after which the parties will file their closing statements and the court will enter judgment."[54]

"In its Decision on Jurisdiction and Admissibility ('Decision on Jurisdiction'), the Tribunal stated that 'there is no danger of double recovery, having regard *inter alia* to the express assurances given by the Claimant in oral argument.' The Tribunal cited as grounds for its conclusion Claimant's statement at the Hearing on Jurisdiction:

*The local case brought by Puentes, the local lawsuit, if it were within the control of Salini Impregilo, it would be dismissed. [...] Now, the real issue being raised by Article 8(4) in this context is one of a double recovery issue, but as the Tribunal noted yesterday, tribunals, under international law, can take care of that issue, and we can take care of that issue. We can provide assurances to this Tribunal that we will not seek double recovery; that is, we will not collect we will not have a double recovery for Salini Impregilo."*[55]

"As of the present date, Claimant's statement is insufficient to minimise the risks of double recovery. The situation of the local proceedings brought by PdL against the Argentine State is not the same now as when the Hearing on Jurisdiction was held. At that time, Hochtief — the other PdL shareholder holding 26% of the company— had not as yet submitted its waiver in the local proceedings. Indeed, when Claimant provided its justification as to why it had not complied with the obligation contained in Article 8(4) of the BIT to withdraw from the court proceedings when it commenced this arbitration proceeding, Claimant's argument was that it could not control PdL's decision to withdraw since it only held 26% of the company."[56]

"As a result of Hochtief's waiver submitted in the local proceedings, Claimant became the shareholder in PdL with control to pursue or withdraw from such claim. Consequently, as the circumstances on which Claimant relied to justify its non-compliance with Article 8(4) of the BIT have changed, the Argentine Republic requests that the

[54] Respondent's Post-Decision on Liability Brief, ¶ 53 (Footnotes omitted).
[55] Respondent's Post-Decision on Liability Brief, ¶ 54 (Footnotes omitted).
[56] Respondent's Post-Decision on Liability Brief, ¶ 55 (Footnotes omitted).

> Tribunal order Claimant to have the local proceedings terminated and to waive any and all rights in connection with the local claim."[57]
>
> "In addition, given that this Tribunal, unlike the tribunal in *Hochtief v. Argentina*, has admitted Claimant's claim in its capacity as a creditor of PdL, and having regard to the fact that Claimant's claims have also been allowed in PdL's reorganisation proceedings (and have been partially paid), and that any funds entering the reorganisation estate would be first applied to the payment of creditors' claims, including those of Claimant, the Argentine Republic requests that Claimant assign to the State its claims and those of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, in PdL's reorganisation proceedings pending before Commercial Trial Court No. 13, Clerk's Office No. 26, in their current status, and that Claimant be deprived of any and all rights under the Award to be issued by the Tribunal in the event Claimant breaches, frustrates or otherwise circumvents compliance with, this condition. In addition, for all purposes, Claimant must assign to the Argentine State the right to any amounts that may be determined as a liquidation remainder due to it for its shareholding in PdL, as well as those of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, in their current status, with Claimant being deprived of any and all rights under the Award to be issued by the Tribunal in the event it breaches, frustrates or otherwise circumvents compliance with, this condition. Both assignments must comply with all of the necessary validity requirements under Argentine law so as to render them enforceable against third parties."[58]

75. Subsequently, the Parties submitted their respective comments on the Argentine Republic's requests concerning the local proceedings in connection with the risk of double recovery under paragraph 117(c), (d), (e), and (f) of Respondent's submission of 9 June 2023 (Post-Decision on Liability Brief of the Argentine Republic):

> "(c) to order Webuild to cause the termination of the local proceeding styled 'Puentes del Litoral S.A. c/EN. M. Planificación IP y s/Proceso de Conocimiento,' File No. 25047/2014, pending before Federal Contentious Administrative Trial Court No. 8, and to waive any and all rights in connection with such court case;
>
> (d) to order Webuild to assign to the Argentine Republic its claims, and those of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, as allowed in the reorganisation proceedings styled 'Puentes del Litoral S.A. s/ concurso preventivo,' File No. 20328/2007, pending before Commercial Trial Court No. 13, Clerk's Office No. 26, in their current status, and that it be deprived of any rights under the Award to be issued by the Tribunal in the event it

[57] Respondent's Post-Decision on Liability Brief, ¶ 56 (Footnotes omitted).
[58] Respondent's Post-Decision on Liability Brief, ¶ 57.

> breaches, frustrates or otherwise circumvents compliance with, this condition"
>
> (e) to order Webuild to assign to the Argentine Republic the right to any amounts that may be determined as a liquidation remainder of PdL that Webuild may be entitled to by virtue of its shareholding in PdL, as well as that of its direct or indirect subsidiaries, affiliates, controlling and controlled companies, in their current status, and that it be deprived of any rights under the Award to be issued by the Tribunal in the event it breaches, frustrates or otherwise circumvents compliance with, this condition;
>
> (f) to order Webuild to carry out the above-mentioned assignments with all of the necessary validity requirements under Argentine law so as to render them enforceable against third parties;"

76. The Tribunal recognizes the avoidance of double recovery as an important principle to take into account where relevant. It notes, however, that to date, Webuild has not received any payments from any local proceedings. There are therefore no such payments to be considered in the present Award. However, some safeguards against potential future double recovery can be incorporated. First and foremost, the Tribunal recalls the repeated commitment made by Webuild during various stages of the current proceedings that it will not seek double recovery. Moreover, the Tribunal points out that any double recovery issues that may arise in the future as a result of domestic proceedings, after the payment of the damages in the present Award, can be considered by the relevant domestic court based on its appreciation of the extent of the identity of claims.

77. Moreover, the Tribunal has taken into consideration that, in its Decision on Liability, it found only a violation of the FET standard, not an unlawful expropriation. Had the Tribunal found the latter, the compensation under the present Award would have been equivalent to the value of Webuild's shares in PdL. However, that is not the relevant measure of damages with an FET violation. As a result, were the Claimant to receive any payment on debt or a liquidating distribution in its capacity as a shareholder of PdL once the reorganisation is completed, that would not necessarily constitute a double recovery.

78. The Tribunal does not find it appropriate at this stage to order an assignment of rights, as that would be too speculative and hypothetical. Whether such an assignment might

be warranted in the future is a question to be decided by the adjudicatory authority awarding damages that might carry a risk of double compensation. However, the Tribunal considered that a formal written undertaking from the Claimant consistent with its submissions that it would not seek double recovery would be appropriate, and therefore invited the Claimant to provide such a document on 8 November 2024. The Claimant submitted the requested Undertaking on 21 November 2024 (extended deadline), and on 13 December 2024, submitted a revised undertaking ("**Revised Undertaking**") pursuant to the Tribunal's directions of 5 December 2024. By letter dated 13 January 2025, on instructions of the Tribunal of 18 December 2024, the Claimant also acknowledged its understanding that any third party that might acquire any right in the Award subsequent to its issuance would be notified in writing of the undertaking by the Claimant and provided with a copy of it, and further notified in writing of its understanding that such third party would be bound by the undertaking to the same extent as the issuing party with respect to any issues of double recovery.

## B. VALUATION DATE

### (1) The Parties' Submissions

79. As noted in paragraph 9 above, in its Decision on Liability, the Tribunal decided that Argentina's failure by September 2006, after the end of the economic emergency, to reestablish the economic equilibrium of the Concession, was a violation of the obligation of fair and equitable treatment under the BIT.

80. In its Post-Decision on Liability Brief of 9 June 2023, Argentina questions whether the Tribunal correctly established the valuation date of 31 August 2014 for purposes of compensation, and argues that the more appropriate valuation date based on the Tribunal's analysis ought to be September 2006:

> "[T]he Tribunal found that the failure to restore the economic equilibrium of the Concession by September 2006 was the conduct in breach of the obligation to afford FET and to refrain from adopting unjustified measures under Article 2.2 of the BIT. However, the Tribunal stated that, for the purposes of determining compensation, the *quantum* experts had to use the valuation date of 31 August 2014. The Tribunal provided no explanations whatsoever as to the reasoning or basis on account of which such valuation date was to be used, despite

> the fact that it found that the conduct in breach of the BIT took place in September 2006, rather than in August 2014."[59]

> "It does not go unnoticed that the date of August 2014 is the valuation date proposed by Claimant. However, that valuation date was premised on Claimant's claim for unlawful expropriation—'the valuation date must account for all of the acts that consummated the taking' —which placed the measure in breach of the BIT in 2014 — 'the measure that ripened into an expropriation is the Concession's termination, which occurred in 2014'—. However, the Tribunal rejected Claimant's claim, and it only found that there was a violation of the obligation to afford FET and to refrain from adopting unjustified measures pursuant to Article 2.2. of the BIT, on account of the failure to restore the economic equilibrium of the Concession in September 2006. As a consequence, in accordance with the Tribunal's determination of the conduct considered to be in breach of the BIT, the valuation date should be September 2006, rather than August 2014."[60]

81. In this same line, Argentina argues that "[w]hile the Tribunal considered that the failure to approve PdL's request for an equity injection […] adversely affected PdL and led to its dissolution as decided by its shareholders and to the automatic termination of the Contract in accordance with its terms, the Tribunal did not establish that this was a conduct that was in breach of the BIT." [61] Argentina claims that "PdL did not request an increase but a decrease in its capital stock, which was denied as it was contrary to the Concession Contract and the law applicable to it." [62]

82. Argentina also maintained during the merits phase in the present proceedings as well as in its Post-Decision on Liability Brief, that the valuation date should be January 2002, "as Claimant's claim was premised on the Emergency Law enacted on that date",[63] as opposed to what the Tribunal held, namely that the Claimant's claim was premised on "Argentina's failure within a reasonable time following the end of the emergency to restore the economic equilibrium of the Concession Contract."[64] Argentina claims that "this contradicts the Tribunal's previous acknowledgment" that the challenged measures "start with the Emergency Law",[65] while recognising that the

[59] Respondent's Post-Decision on Liability Brief, ¶ 68 (Footnotes omitted).
[60] Respondent's Post-Decision on Liability Brief, ¶ 69 (Footnotes omitted).
[61] Respondent's Post-Decision on Liability Brief, ¶ 70 (Footnotes omitted).
[62] Respondent's Post-Decision on Liability Brief, ¶ 70 (Footnotes omitted).
[63] Respondent's Post-Decision on Liability Brief, ¶ 71, citing to, *inter alia,* its Counter-Memorial, ¶ 587.
[64] Decision on Liability, ¶¶ 378-379.
[65] Respondent's Post-Decision on Liability Brief, ¶ 71.

Tribunal concluded that "the Emergency Law and the renegotiation process were legitimate exercises by Argentina of its police powers." [66]

83. In sum, Argentina emphasises that "the conduct that the Tribunal finally considered to be in breach of Article 2.2 of the BIT was the failure to restore the economic equilibrium of the Concession in September 2006, despite which it chose the date of 31 August 2014 as the valuation date. The Tribunal did not explain why it chose that valuation date or how it was based on the law applicable to the dispute." [67]

84. In Argentina's opinion, the 2006 LOU creates the legitimate expectation (of the return of economic equilibrium) that is then breached. The Tribunal construed the concept "within a reasonable time frame" as having occurred by the end of 2006, such that the breach arises at this point. Accordingly, Argentina's view is that the breach occurred in September 2006, and so damages should be evaluated at this point. It relies on prior case law:

> [73] "Arbitral tribunals have often held that the appropriate valuation date is the date immediately prior to the breach. For instance, the tribunal in *Abed El Jaouni v. Republic of Lebanon* found that: 'In general, unless the circumstances justify otherwise, the most appropriate date for the determination of fair market value is the date immediately prior to the breach.' The tribunal stressed that:
>
> *The principle of full compensation does not aim to maximise the amount of damages awarded to an injured investor, but to compensate for the harm suffered on the most financially sound and accurate basis possible. [...] It is further unclear how the valuation date of 31 December 2018 ensures that the alleged damages are 'a direct consequence of the Measures', rather than the date immediately preceding the Measures.* [68]
>
> [74] In this respect, the tribunal in *SAUR v. Argentina*, which found that the delay in implementing the renegotiation agreements had constituted a breach of the applicable treaty, adopted the approach of 'normal economic situation' for the purposes of establishing the date on which the value for the determination of compensation had to be calculated:

[66] Decision on Liability, ¶ 334.
[67] Respondent's Post-Decision on Liability Brief, ¶ 72.
[68] Respondent's Post-Decision on Liability Brief, ¶ 73, citing *Abed El Jaouni and Imperial Holding SAL v. Republic of Lebanon*, ICSID Case No. ARB/15/3, Award, 14 January 2021, ¶¶ 309-310 (**AL RA-345**).

> *The normal economic situation will be that in which Argentina is not committing an illegal act. Given that the first of the breaches was the postponement of the entry into force of the Second Letter of Understanding, the normal economic situation would have taken place if Argentina had implemented the Second Letter of Understanding without delay. That will be the date on which the value of OSM must be determined.*
>
> *The Arbitral Tribunal has concluded that the principle of full reparation requires compensating Sauri for the value of its Investment as of the date immediately prior to that on which the first act in breach of the BIT occurred. As the first breach was the delay in giving effect to the Second Letter of Understanding, the valuation date shall be that on which its entry into force should have occurred, without delay*.[69]
>
> [75] Similarly, the tribunal in *Gemplus v. Mexico* stated that, under international law, the relevant date for the determination of compensation is that preceding the first breach."[70]

85. The Respondent's experts, in parallel, submitted an alternative cash flow calculation using the September 2006 valuation date:

> "Cash flows are calculated pursuant to the Tribunal's instructions and the same sensitivities described in section III are presented. The only difference is that cash flows are discounted as of September 2006 rather than being discounted or updated as of August 2014."[71]

86. The Claimant did not address this issue in its corresponding submission of 9 June 2023. However, its experts put forward some arguments regarding the valuation date in response to the Respondent's experts' submissions on this issue. More specifically, the Claimant's experts note:

[69] Respondent's Post-Decision on Liability Brief, ¶ 74, citing *SAUR International, S.A. v. Argentine Republic*, ICSID Case No. ARB/04/4, Award, 22 May 2014, ¶¶ 169 and 256 (emphasis added) (**AL RA-346**).
[70] Respondent's Post-Decision on Liability Brief, ¶ 75 (Footnotes omitted).
[71] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 76-78. The Respondent's experts go on to say that: "*Under this alternative calculation, but-for cash flows to the firm generated annually from September 2006 to May 2023 are discounted at the WACC calculated upon the basis of the information available as of September 2006. The net debt of PdL outstanding as of 31 December 2005 updated to 1 September 2006 is subtracted from the resulting firm value to calculate the value of equity, and then we update this amount to 31 August 2014 at the average annual yield on the 5-year US Treasury bonds, capitalized annually, so as to compare the result with the August 2014 calculation. Consistently, for the purpose of calculating damages to Webuild as creditor, we update Webuild's debt as of 31 December 2005 to August 2014 at the average annual yield on the 5-year US Treasury bonds." "Based on this method, we have estimated damages to Webuild as shareholder of USD 19.5 million and USD 31.0 million as creditor as of 31 August 2014. Thus, the total damages estimated as of August 2014 amount to USD 50.5 million*."

> "From an economic perspective, MS's adjustment is unreasonable as it results in the reduction of damages by applying an overestimated WACC rate to discount future cash flows as of 2006 and a low interest rate to update them back to August 2014 as Figure 9 below shows.
>
> […]
>
> Combining a high discount rate with a low update rate artificially reduces damages as illustrated in Figure 10 below. For illustrative purposes we rely on MS's estimate of the applicable WACC rate as of 2014 and 2006, and the applicable interest rate to update damages.
>
> […]
>
> We note, additionally, that the change of the valuation date to September 2006 would also require an ex-ante approach in which MS would also need to adjust Claimant's expectations as of that date to estimate future cash flows. Variables such as the renegotiation process, expected inflation, exchange rates, traffic forecasts, etc., would need to be adjusted. MS propose none of these adjustments.[72]

87. Although at an earlier stage of the case the Claimant appeared to oppose the 2014 valuation date in the context of expropriation,[73] it also opposed Argentina's 2006 valuation date in its Reply.[74] However, its experts, applying the Tribunal's instructions regarding the calculation of quantum, state as follows:

> "We understand that [setting 2006 as valuation date] this is not consistent with the DoQ as it defines the 'Valuation Date" as August 2014, and instructs the Parties to use BRG's model as baseline for the calculations:
>
> ¶ *369. Webuild presents a damages methodology that measures the fair market value of its investment in Puentes as of the date of the Termination Resolution in August 2014 (the 'Valuation Date')* […]."[75]
>
> "Indeed, in paragraph 438(6) the Tribunal states that: "[...] The Tribunal has determined that the Chorzów Factory standard of full reparation, using an income method, calculated on the basis of free cash flow to the firm, shall be used to calculate damages, including historical damages from September 2006 to the Valuation Date of 31 August 2014, and future damages from that date to the end of the

[72] BRG's Implementations of the Directions on Quantum, ¶¶ 66-67, 69 (Footnotes and figures omitted).
[73] Claimant's Memorial, ¶¶ 318, 319.
[74] Claimant's Reply, ¶¶ 345, 346.
[75] BRG's Implementations of the Directions on Quantum, ¶ 64, citing Decision on Liability, ¶ 369.

> Concession". We understand from this that it is clear that the Valuation Date is August 2014."[76]
>
> "From an economic perspective, MS's adjustment is unreasonable as it results in the reduction of damages by applying an overestimated WACC rate to discount future cash flows as of 2006 and a low interest rate to update them back to August 2014 as Figure 9 below shows."[77]
>
> "Combining a high discount rate with a low update rate artificially reduces damages as illustrated in Figure 10 below. […]"[78]
>
> "As shown in Figure 10 above, a cash flow of USD 100 is equivalent to USD 38 in 2014 when discounted at MS's estimated 2014 WACC rate of 16%. However, MS's alternative calculation yields an equivalent amount of USD 23 by discounting the same USD 100 cash flow to September 2006 using a 2006 WACC of 12% and then updating it using the 5-year U.S. Treasury rate ranging between 1% and 5% to August 2023. This represents a 40% decrease in value when compared to the methodology in the BRG Second Report Model (i.e., Valuation Date of August 2014)."[79]
>
> "We note, additionally, that the change of the valuation date to September 2006 would also require an ex-ante approach in which MS would also need to adjust Claimant's expectations as of that date to estimate future cash flows. Variables such as the renegotiation process, expected inflation, exchange rates, traffic forecasts, etc., would need to be adjusted. MS propose none of these adjustments."[80]

**(2) The Tribunal's Analysis**

88. While Argentina believes the valuation should occur at the initial breach, the Tribunal's analysis is of a continuing breach, which began with the initial breach in September 2006 and continued until the Concession Contract was irrevocably terminated in August 2014.

89. This can be seen from discussion in the Decision on Liability. The Tribunal linked the valuation date to the time *following* the breach of the FET standard: that is, breach begins to run from 2006:

[76] BRG's Implementations of the Directions on Quantum, ¶ 65, citing Decision on Liability, ¶ 438(6).
[77] BRG's Implementations of the Directions on Quantum, ¶ 66 (Figure 9 omitted).
[78] BRG's Implementations of the Directions on Quantum, ¶ 67 (Figure 10 omitted).
[79] BRG's Implementations of the Directions on Quantum, ¶ 68 (Figure 10 omitted).
[80] BRG's Implementations of the Directions on Quantum, ¶ 69.

> "In contrast, the basis of the Claimant's case here is not pesification, but Argentina's failure within a reasonable time following the end of the emergency to restore the economic equilibrium of the Concession Contract. Webuild has not sought to recover any damages for the period between 2002 and 2006 (including the period of the Financial Assistance Loan). Its historical damage calculations begin in September 2006, grounded in the terms of the 2006 LOU. Its 'but-for' scenario is consistent with the basis of the FET violation that the Tribunal has determined took place (i.e., the failure to restore the Concession's economic equilibrium at the time of the 2006 LOU).".[81]

90. Indeed, when discussing the breach of the FET, the Tribunal considers the consequences subsequent to that date:

> On the contrary, Argentina behaved in an arbitrary, grossly unfair, unjust and idiosyncratic manner in not renegotiating the Concession Contract within a reasonable time, i.e., not presenting a renegotiation proposal after the 180-day deadline set out in the Emergency Law; unilaterally replacing the first LOU; denouncing the second LOU; making representations regarding the First Transitory Agreement; not ratifying the Fourth Transitory Agreement; and in preventing Puentes' shareholders from injecting more capital into the company to avoid its dissolution. Equally, the Respondent conducted itself in an unjust manner when terminating the Concession.[82]

> The Tribunal appreciates that Argentina has argued that termination was an automatic result of the Concessionaire's dissolution and liquidation. While the Contract may have technically permitted such an action, FET requires that the Tribunal consider the termination not in isolation, but in conjunction with the other facts and circumstances of this case. Viewed in light of the totality of the facts and circumstances, it is clear that the termination was the final consequence of the failure to rebalance and the prolonged period of disequilibrium in which Puentes tried to operate under the unsustainable yoke of frozen tariffs, the terms of the Financial Assistance Loan, and increasing costs. If Respondent's failure to approve the equity infusion was the nail in the coffin of the investment following the failure to timely renegotiate, the termination of the Contract was its burial.[83]

[81] Decision on Liability, ¶ 379. The Tribunal notes that this last phrase – '*the failure to restore the Concession's economic equilibrium at the time of the 2006 LOU*' does not qualify the entire first clause but was intended to qualify the '*economic equilibrium*'.
[82] Decision on Liability, ¶ 265. The Fourth Transitory Agreement was concluded 6 March 2012 and terminated by resolution of 26 August 2014.
[83] Decision on Liability, ¶ 266.

91. This is reinforced by the Tribunal's conclusions on the breach of the negative FET standard under Article 2.2:

> As the foregoing analysis has indicated, the Respondent had an obligation to restore the Concession's equilibrium within a reasonable time in the wake of the 2002 Emergency Law, based on both the provisions of the Concession Contract and the Emergency Law itself. That did not occur. Instead, the Concessionaire was subjected to a protracted series of negotiations between 2006 and 2014 during which period of time its toll rates were frozen at 2002 levels and its financial viability increasingly undermined, culminating in its insolvency and the Concession Contract's termination. […] Accordingly, on the facts of this matter, the Tribunal finds that Article 2.2 (second sentence) has also been violated.[84]

92. Contrary to Argentina's claims "that valuation date [of August 2014, posited by the Claimant] was premised on Claimant's claim for unlawful expropriation";[85] the 2014 date is not based on the *expropriation* (on which the Tribunal did not make separate findings), but because the time at which the alleged expropriation took place was also the time of the investment's "burial".[86] The Tribunal sees the breach as beginning in 2006, and ending in 2014.

93. In its Decision on Liability, the Tribunal accepted the Claimant's submission that the appropriate valuation date was the 2014 date. While Argentina is correct that the Claimant's submissions in this regard were based on the date of the alleged expropriation, that does not preclude selecting that date as the date of the irrevocable FET breach. To be clear, the Tribunal considers that 31 August 2014 was in fact the date of the FET breach.

94. The Tribunal could in theory have chosen the date of the Award as the valuation date, and viewed the termination as simply another event in the continuing breach, but the finality of the Concession Contract termination suggested that the better approach was to focus on that termination date.

[84] Decision on Liability, ¶ 268.
[85] Respondent's Post Decision Liability Brief, ¶ 69.
[86] Decision on Liability, ¶ 266.

95. Indeed, the Tribunal's approach to compensation is premised on the idea of a continuing breach. The Tribunal relies on *Chorzów Factory* ("reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed"),[87] and takes a broad approach:

> Whether they should be limited to the time period when the wrongful act occurred is more questionable; in the Tribunal's view, the principle of full reparation for the consequences of the act is the overriding principle, while principles such as non-remoteness rather than a temporal limit per se will operate to contain the extent of recoverable damages. [88]

96. When considering causation, the Tribunal uses the 2006 date as the breach and then considers continuing effect:

> Had the economic equilibrium of the Concession been restored in 2006, as the Tribunal has concluded it should have been, it is reasonable to assume that Puentes would have been able to avoid Boskalis-Ballast's filing of the insolvency petition, and the subsequent reorganization proceedings in 2007 […].[89]

97. If breaches of the FET standard set the date at the initial breach, then Argentina's position could be seen as correct. But given the continued efforts on the part of the Parties to renegotiate subsequent to that date, the Tribunal considers it appropriate to consider the continuing breach and to set the valuation date as the date when this breach culminated in the termination of the Concession Contract.

98. As the Tribunal held in the Decision on Liability,

> [T]he primary legitimate expectation of the Claimant was grounded in the Concession Contract itself: while this Contract may not create any expectation of a particular rate of return or profitability, it establishes the foundation for other expectations, including the expectations of a certain economic environment based on the existence of the Convertibility Law and the indexing of values, as well as the specific

[87] Decision on Liability, ¶ 361.
[88] Decision on Liability, ¶ 362.
[89] Decision on Liability, ¶ 367.

> expectation that the economic equilibrium of the contract would be maintained.[90]

99. An additional persuasive element in this regard was "the Argentine Commercial Court Judgment of 11 June 2008, holding that UNIREN's failure to continue renegotiation (after the 2007 LOU) was in breach of Argentine law, and expressing its concern that more than six years after enactment of the Emergency Law 'the grave imbalance in terms of the agreement persists'."[91] As a result, the Tribunal concluded that the FET breach stemmed from the obligation created by the Emergency Law (of 2002) and the First LOU (of 2006) to restore the economic equilibrium within a reasonable time.[92] The period of September 2006 to August 2014 was considered to have surpassed that reasonable time period.

100. For these reasons, the Tribunal reaffirms its earlier decision that the breach of the FET standard became irrevocable on 31 August 2014 and that that date, rather than September 2006, is therefore the appropriate valuation date for purposes of the calculation of damages.

## C. SUBMISSIONS OF THE PARTIES REGARDING THE FURTHER INSTRUCTIONS FOR CALCULATION OF DAMAGES

101. The Tribunal instructed the Parties (or a Party, as indicated) to prepare revised calculations of damages consistent with its decision on the basis of a set number of instructions. The Parties were unable to agree regarding the outcome of such calculations as there were fundamental disagreements between them on all but a few of the questions raised by the Tribunal.

### (1) Reliance on Toll Rates in 2006 LOU in "But For" and Frequency of Toll Rate Increases

102. As noted above, the Tribunal instructed the parties, in preparing their revised calculation of damages, that

> Initial toll rates should correspond to those set forth in the 2006 LOU, which by its terms was aimed at a partial restoration of the

[90] Decision on Liability, ¶ 256.
[91] Decision on Liability, ¶ 258.
[92] Decision on Liability, ¶ 267.

> Concession's equilibrium. Readjustment of rates after the initial period set by the 2006 LOU shall be done on an annual basis consistent with the indices and 5% threshold specified in that LOU (based on paragraph 390 above).[93]

103. The Parties do not disagree on this calculation, but Respondent has suggested the resulting rates have implications for other variables used in the calculation of damages, particularly elasticity of demand (discussed below in subsection (3) of this Section C).

104. The Claimant's experts submit that:

> "Following the Tribunal's instructions, we update the BRG Second Report Model by replacing the monthly toll rate inflation adjustments with annual toll rate inflation adjustments, considering the inflation threshold of Section 6 of the 2006 MoU and also by delaying the first inflation increase from September 2006 to January 2008."[94]

> "We do not consider that the 150-day maximum administrative period for the approval of toll rate readjustments mentioned in Section 6 of the MOU is relevant because, as can be observed in Figure 2 below, monthly accumulated inflation between 2007 and 2016 was above the 5% threshold by June, at the latest, in every year. Indeed, accumulated inflation between December 2005 (the 2006 MOU is expressed in 2005 ARS) and January 2008 (the date at which PdL readjusted its toll rates) was 28%. Therefore, it is reasonable to assume that PdL would have commenced its toll rate readjustment administrative process at this time, and would have adjusted the toll rate twelve months after its prior tariff readjustment." [95]

105. The Respondent's experts state that:

> "According to the Tribunal's instruction, initial toll rates should correspond to those set forth in the 2006 LOU, and readjustment of rates after the initial period set by the 2006 LOU shall be made on an annual basis consistently with the indices and the 5 % threshold specified in that LOU."[96]

> "We confirm that initial toll rates in the Joint Updated Valuation Model correspond to those set forth in the 2006 LOU, and that the readjustment of rates after the initial period set by the 2006 LOU has

[93] Decision on Liability, ¶ 439(a).
[94] BRG's Implementations of the Directions on Quantum, ¶ 10.
[95] BRG's Implementations of the Directions on Quantum, ¶ 12 (Footnotes and Figure 2 omitted).
[96] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 18 (Footnotes omitted).

> been made on an annual basis consistently with the indices and the 5 % threshold specified in that LOU."[97]

> "The experts agree as to the calculation made according to the Tribunal's instruction. However, it should be noted that the values resulting from this calculation imply the adoption of a but-for scenario in which the toll rates of the Rosario - Victoria connection would be significantly higher than those of the existing alternative routes, such as the Zárate - Brazo Largo bridge, with the consequent impact on demand and elasticity." [98]

106. The Tribunal accepts the revised calculation, which has been agreed by the Parties, and will consider the argument of the Respondent regarding the effect of these adjusted toll rates on demand elasticity in subsection (3) below.

**(2) Assumption Regarding Toll Subsidy**

107. The Tribunal determined that the revised calculations of damages had to include a figure showing the impact of termination of any toll subsidy included in the 2006 LOU after 2012 versus the continuation of such subsidy until the end of the Concession.[99]

108. The Claimant's experts submit:

> "Following the Tribunal instructions, we implement in the Joint Updated Valuation Model a sensitivity to assess the impact of the termination of the toll subsidies as of 1 February 2012. As shown in Table 3 below, implementing this sensitivity reduces damages to Claimant as of the Valuation Date from USD 174.2 million to USD 172.7 million, a USD 1.5 million decrease. We do not apply this adjustment in our revised calculation of damages as we understand from the Tribunal instructions that this adjustment was only requested as a sensitivity." [100]

109. The Respondent's experts note:

> "In the Joint Updated Valuation Model we agreed with BRG to include a switch that allows for quantification of the impact resulting from discontinuing toll subsidies in 2012, or alternatively maintaining subsidies until the end of the Concession."[101]

[97] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 19.
[98] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 20 (Footnotes omitted).
[99] Decision on Liability, ¶ 439(b).
[100] BRG's Implementations of the Directions on Quantum, ¶ 16 (Footnotes omitted).
[101] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 22 (Footnote omitted).

> "As this toll subsidy was cancelled for all road concessionaires in 2012 and as there is no reference to any rate compensation in the 2007 Letter of Understanding or in the subsequent Provisional Agreements, in our opinion the subsidy should be eliminated in 2012."[102]
>
> "More importantly, it should be noted that such toll subsidy was not included in the original offer documents used by bidders as the basis for their bids. Therefore, including such toll subsidy in the but-for scenario not only generates an extraordinary benefit for the Concessionaire beyond the offer terms but also violates the principle of equality among bidders. In fact, the increased traffic volume resulting from the application of this compensation generates a revenue surplus that is totally unrelated to the rebalancing of the Concession within the framework of the contractual renegotiation."[103]
>
> "Therefore, for the purposes of damage assessment, in our opinion, applying a toll subsidy in the but-for scenario is not admissible, as we stated in our reports. Removing such compensation in 2012 would partially correct the inconsistency outlined in the preceding paragraph."[104]
>
> "We disagree with BRG's position, as their calculations imply that the same level of toll subsidies will be maintained for the whole term of the Concession."[105]

110. The Claimant thus treats the subsidy as a sensitivity only, and continues to apply it on the basis that its calculations do not show a significant impact on damages, while the Respondent considers that it is improper to apply the subsidy after its termination in 2012. The Tribunal considers that the position of the Respondent is the better one and that it would be inappropriate to apply the subsidy after the evidence appears to indicate it was terminated. Since this subsidy was granted by Argentina to toll operators for a limited period of time, the Tribunal considers it appropriate to include it for the period of time during which it was in force.

**(3) Elasticity Values**

111. The Tribunal in its Decision on Liability requested the following with respect to elasticity values:

[102] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 23.
[103] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 24 (Footnote omitted).
[104] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 25 (Footnote omitted).
[105] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 26.

> The revised calculation of damages should be based on three different assumptions regarding elasticity values: one at the low end of the envelope of values put forward by Mr. Bates in the *Hochtief* Arbitration; one at the high end; and one at the midpoint. Given the Tribunal's finding of greater inelasticity of demand for heavy rather than light traffic, the values in each calculation should reflect this differential, using the same degree of differential as reflected in Table 9 set forth in paragraph 399 above.[106]

112. Elasticity in relation to demand seeks to measure the effect of price variations (here, toll rates) on demand for the product or service in question (here, the toll road), taking into account alternatives to the product or service. In lay terms, the lower the elasticity, the less impact a price increase will have on the demand for a product or service. The Tribunal's instructions that the calculations should reflect greater inelasticity of demand for heavy rather than light traffic reflected its evaluation that the evidence shows that heavy traffic, which is more commercial in nature, would be less inclined to seek alternative routes in the wake of toll increases than light traffic. The Parties performed the requested calculations, but remain divided as to what the appropriate elasticity value for this investment should be.

113. The Claimant's experts put forward that:

> "Following the Tribunal's instructions, our revised damages calculation uses Bates' range of elasticities adjusted for the light and heavy traffic differential from Table 9 of the DoQ."[107]

> "Mr. Bates estimated a range of elasticity parameters of -0.15 to -0.30 for light vehicles and a range of -0.10 and -0.25 for heavy vehicles. We point out that Bates's range of elasticities cannot be inferred from the evidence he provided in his report, which shows lower values in absolute terms (or less negative), particularly for heavy traffic. Figure 3 below compares Mr. Bates's range of elasticities to the evidence provided in his report."[108]

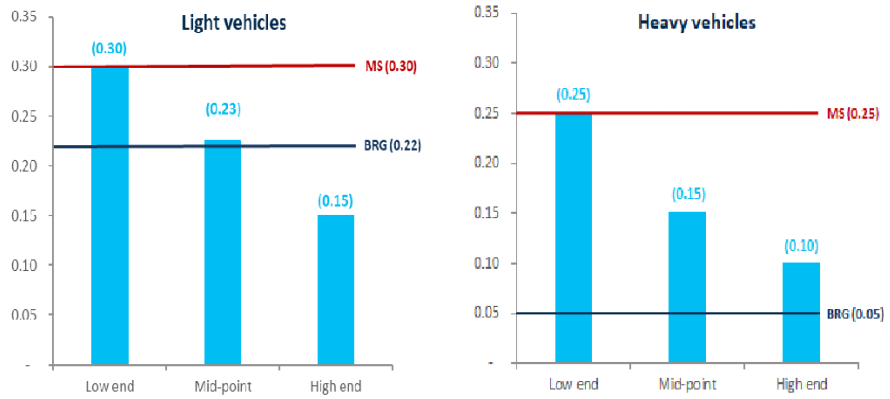
> "In his report, Bates also provides a cost analysis of the Rosario-Victoria Bridge's alternatives where he indicates any alternative route would represent substantial costs for the user, especially heavy vehicles. This conclusion is consistent with lower elasticity for heavy vehicles and is in line with our cost assessment, which indicated that

[106] Decision on Liability, ¶ 439(c).
[107] BRG's Implementations of the Directions on Quantum, ¶ 19.
[108] BRG's Implementations of the Directions on Quantum, ¶ 20 (Footnote and Figure 3 omitted).

the two alternatives to the Rosario-Victoria Bridge resulted in 2 to 4 times incremental transportation costs."[109]

"The Tribunal requested that we provide damages calculations for the low, mid, and high elasticities estimated by Bates. Since Bates only provides low and high levels, we calculate the mid-point as the average between his low-end and high-end estimations. Figure 4 below shows Mr. Bates's elasticity parameters for all categories, prior to the adjustment of the heavy traffic differential, compared to BRG's and MS's estimates. Note that considering that the elasticity parameters are negative, the lower end is the one that generates the highest impact on revenues since it is highest in absolute value."[110]

**Figure 4: Mr. Bates's elasticity parameters compared to BRG and MS base case**




Source: Rosario to Victoria Bridge Traffic and Revenues, Philip Bates, p. 57 (MS-13); Joint Updated Valuation Model (RD-139/MS-31)

"As requested by the Tribunal, we adjust Bates's elasticities for the light and heavy traffic differential. To do so, we use Mr. Bates's range of elasticities for Category 2 (which we apply for all light traffic) as the starting point. We then compute heavy vehicle elasticity by applying the ratio of heavy vehicle elasticity v. light traffic elasticity from Table 9 of the Tribunal's DoQ. This results in a ratio of 22%, meaning that heavy traffic elasticity is 22% of light traffic elasticity. Applying this ratio, we calculate the adjusted range of Bates's elasticity parameters in Figure 5 below. We then compare these elasticity parameters to those used by BRG and MS in our second reports respectively. After this adjustment, we find that Mr. Bates's mid-point elasticity is very similar to the one we have proposed in our assessment."[111]

[109] BRG's Implementations of the Directions on Quantum, ¶ 21.
[110] BRG's Implementations of the Directions on Quantum, ¶ 22.
[111] BRG's Implementations of the Directions on Quantum, ¶ 23 (Footnotes and Figure 5 omitted).

> "As shown in Table 4 below, applying the range of Mr. Bates's adjusted elasticity parameters results in a range between USD 168.4 million and USD 180.4 million as of the Valuation Date."[112]

> "Since the mid-point of Bates's adjusted elasticity is very similar to the elasticity we estimated in our original assessment based on academic and applied studies on traffic, we do not adjust our revised calculation for this item. Moreover, in our opinion, the information on Bates's calculations is insufficient to verify its reasonability. We do note that applying Bates's midpoint adjusted for the light/traffic differential has only a minor impact on damages, whereas the high (low) points increase (decrease) damages by USD 6.2 million (USD 5.8 million) respectively as shown in Table 4 above." [113]

114. The Respondent's experts posit that:

> "According the Tribunal's instructions, the revised calculation of damages should be based on three different assumptions regarding elasticity values: one at the lower end of the values curve offered by Mr Bates in the *Hochtief* arbitration, one at the higher end, and one at the midpoint. The values in Mr Bates' curve already reflect greater inelasticity of the heavy traffic category compared to the light traffic category. However, the Tribunal determined that the values of each calculation should reflect greater heavy traffic inelasticity pursuant to Table 9 included in paragraph 399 of the Decision on Liability."[114]

> "In the Joint Updated Valuation Model, we have included a switch to select the lower end of the value curve offered by Mr Bates, the higher end, or a midpoint calculated as the simple average between the low- and high-ends."[115]

> "However, we note that forcing the same degree of differentials between heavy and light traffic elasticities as illustrated in Table 9 prepared by BRG and included in paragraph 399 of the Decision on Liability, the higher end (which assumes the lowest traffic elasticity to toll rate increases) of Mr Bates' 'adjusted' curve results in even lower elasticity both for heavy and light traffic categories than the elasticity assumed by BRG in its reports. Mr Bates' 'adjusted' midpoint results in elasticity values almost identical to those assumed by BRG. Only Mr Bates' 'adjusted' lower end (which assumes greater traffic elasticity to toll rate increases) results in greater elasticity parameters than those assumed by BRG in its reports, and is therefore the only relevant sensitivity to BRG's assumption."[116]

[112] BRG's Implementations of the Directions on Quantum, ¶ 24 (Table 4 omitted).
[113] BRG's Implementations of the Directions on Quantum, ¶ 25 (Footnotes omitted).
[114] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 27 (Footnotes omitted).
[115] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 28 (Footnotes omitted).
[116] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 29.

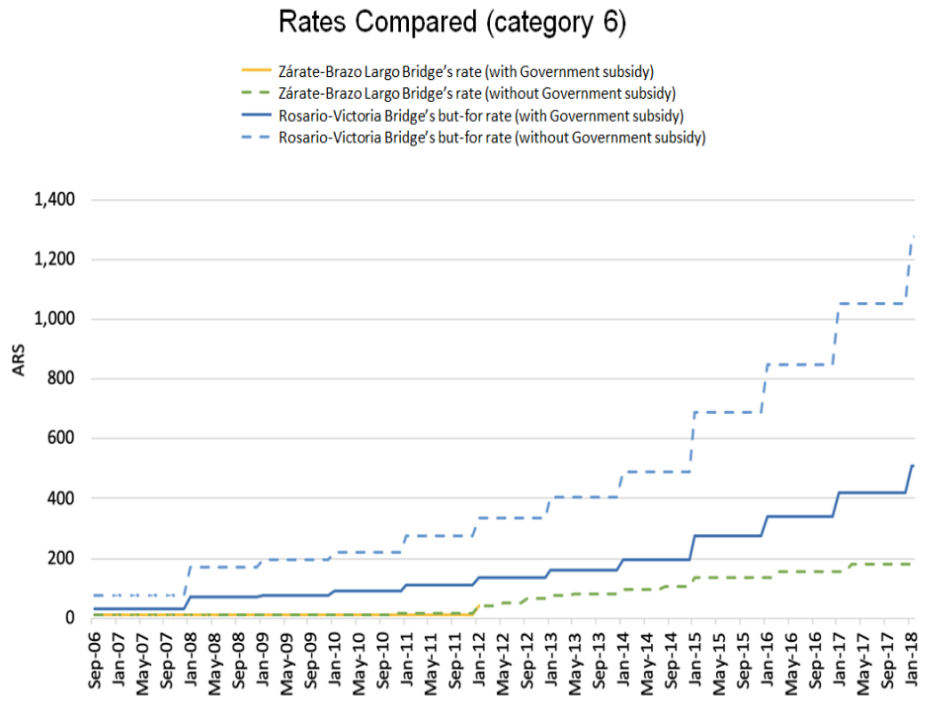
> "Therefore, in the Joint Updated Valuation Model we also included an option to adjust, or not to adjust, the heavy traffic elasticity parameter based upon the differential of Table 9 prepared by BRG and included in paragraph 399 of the Decision on Liability, so as to assess the impact of such adjustment. […]"[117]

> "Given the different framework between the case at issue and the *Hochtief* proceeding, the Tribunal decided it would not be appropriate to apply the *Hochtief* elasticity parameters. Even if the case were different from a legal perspective, the behaviour of the users of the Rosario – Victoria connection faced with changes in toll rate should be the same. In fact, the Bates' Report includes an empirical and detailed analysis of elasticity, traffic and demand specific to such connection. Thus, there would be no grounds to adjust those results."[118]

> "We also find that it is incorrect to assume heavy traffic inelasticity upon the basis of Claimant's allegations that there are no more convenient or direct alternative routes to connect the cities of Rosario and Victoria. Such assertion erroneously assumes that the origin-destination of all heavy traffic travelling on this connection starts and ends in the cities mentioned. This reasoning is incorrect, as we pointed out and as evidenced by the several specific studies conducted which show that most of the vehicles travel from and to other regions for the purposes of import or export of goods, using the Rosario – Victoria route as a Mercosur connection, or as a transoceanic corridor connecting the Atlantic to the Pacific Oceans. It is worth noting that there are other alternative roads to connect said ends, which, in addition, have charged toll rates which are significantly lower than the but-for toll rates according to the 2006 LOU,41 as shown in the chart below."[119]

[117] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 30 (Footnotes omitted).
[118] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 31 (Footnotes omitted).
[119] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 32 (Footnotes omitted).

**Figure 1. Zárate - Brazo Largo Bridge's Rates Compared to Rosario – Victoria Bridge's But-for Rates**




*Source: Connections' Rates Compared, Zárate - Brazo Largo sheet, rows 15 and 22 (Exhibit MS-04); Joint Updated Valuation Model, Val Revs (m) sheet, rows 105 and 123 (Exhibit MS-31).*[42]

> "In our Second Report, we made an alternative elasticity calculation where we estimated the effect that each toll rate increase had on traffic levels for category 2 (representative of light traffic) and category 5 (representative of heavy traffic) based on the actual evolution of traffic and toll rates for the Rosario – Victoria connection. It is striking that the Tribunal made no reference to these parameters in its Decision on Liability, although nothing could be more comparable than this analysis, given that the same route is involved and that the results obtained show greater elasticity for heavy traffic."[120]

115. At this point, the Respondent's experts refer to their Second Expert Report, submitted in the merits phase:

> 117. In any case, based upon the real evolution of traffic volumes and toll rates for the Rosario-Victoria connection, we have assessed the

[120] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 33 (Footnotes omitted).

> effect that each toll rate increase has had on the traffic volumes for category 2 (light traffic) and category 5 (heavy traffic). Taking into account all the increases as from March 2016, elasticity average is -0.28 and -0.14 for light traffic and heavy traffic, respectively. However, if the last increase announced on 30 November 2018 is excluded, given the seasonal variation of traffic on the bridge for December, then average elasticity for light traffic would be -0.45 and -0.10 for heavy traffic. There is no other better analysis for comparable purposes as this analysis is based on the same connection.

118. The table below shows the results of our estimate:

**Table 6. Estimate of Elasticity for the Rosario-Victoria Connection Based upon Real Increases in Toll Rates**

| | Rates | | Rates - Variation % | | Traffic - Variation % | | Elasticity | |
|---|---|---|---|---|---|---|---|---|
| | Category 2 | Category 5 | Category 2 | Category 5 | Category 2 | Category 5 | Category 2 | Category 5 |
| Until Mar-16 | 7.40 | 29.60 | | | | | | |
| Mar-16 | 12.40 | 49.59 | 67.5% | 67.5% | -16.5% | 7.9% | -0.25 | 0.12 |
| Aug-16 | 16.53 | 66.12 | 33.3% | 33.3% | -12.5% | 9.7% | -0.38 | 0.29 |
| Feb-17 | 24.79 | 99.17 | 50.0% | 50.0% | -7.7% | -13.9% | -0.15 | -0.28 |
| Mar-18 | 33.06 | 132.23 | 33.3% | 33.3% | -20.8% | 4.9% | -0.62 | 0.15 |
| Aug-18 | 45.45 | 181.82 | 37.5% | 37.5% | -32.4% | -29.6% | -0.86 | -0.79 |
| Dec-18 | 57.85 | 231.40 | 27.3% | 27.3% | 15.6% | -8.5% | 0.57 | -0.31 |
| | | | | | | Average | -0.28 | -0.14 |
| | | | | | | Average excluding last increase | -0.45 | -0.10 |

*Source: Prepared by the authors of this report based upon data submitted by the National Roads Office. See Exhibit MS-21.*

116. Furthermore, the Respondent's experts continue in their Post-Decision on Liability Valuation Report:

> "In view of the above, the Tribunal's representation, based on the figures submitted by Claimants, which only consider vehicles that start their trip in Rosario to get to Victoria (or vice versa), is not applicable to heavy vehicles which, as explained above, mainly use the connection as a portion of a larger route from and to different locations, for which there are alternative roads."[121]

> "Such an analysis could only relate to certain light vehicles that mostly travel back and forth between the two cities, especially for tourism purposes, as shown by specific studies that collect historical traffic

[121] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 34 (Footnotes omitted).

> records. Furthermore, specific studies indicate that the growth of light traffic was favoured by a toll rate benefit provided for in the original Concession Contract, which is not applicable to heavy vehicles."[122]
>
> "Moreover, the Tribunal's instruction is also technically inconsistent, in that apparently it takes values from the Bates' Report, which result from a detailed analysis of several traffic studies, and then combines them with the results of a completely different analysis with no apparent technical justification. In summary, in our opinion it is appropriate to use the lower ends of Mr Bates' study of -0.30 for the light traffic categories, and -0.25 for the heavy traffic categories without adjustments. These elasticity parameters reflect greater inelasticity of heavy traffic compared to light traffic, consistent with the Tribunal's instruction. Therefore it is not necessary to force the same degree of differentials between elasticities as reflected in Table 9 prepared by BRG referred to in paragraph 399 of the Decision on Liability."[123]

117. The Tribunal examined extensively the question what elasticity value to use. To some extent, the Parties seem to be in agreement that there is a differential between light and heavy traffic. However, the Respondent wishes to use the lower end of the Bates study, presenting a number of actual data-based observations regarding the origins and destinations of road users (particularly how commercial vehicles are likely to use the toll road). The Claimant, on the other hand, argues that the Bates midpoint makes more sense (in particular as it is very close to the Claimant's own calculation). The Claimant bears the burden of persuasion on this issue. Ultimately, the Tribunal is not sufficiently persuaded by the Claimant's arguments and has therefore decided to adopt the Bates low end.

**(4) Rate of Return Assumptions**

118. The Tribunal, in its Decision, asked the Claimant:

> [T]o clarify to what extent, if any, future cash flows in any calculation of damages are based on an IRR in excess of 8.87% and, to the extent that may be the case, to provide an additional calculation based on an IRR of no greater than 8.87%, along with a calculation using an IRR of 9.18% (or such other rate as may result from the new calculation of damages requested by this Decision), taking into account any variations caused by actual performance), so that the effect of any

[122] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 35 (Footnotes omitted).
[123] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 36 (Footnotes omitted).

> higher rate that the Claimant's experts consider historical performance may justify is clear, as set out in paragraphs 406 to 413 above.[124]

119. The Claimant argues that:

> "[I]ts damages assessment is not based on an IRR in excess of 8.87%. Rather, BRG undertakes its assessment in a two-step approach, first calculating toll rates that would allow Puentes del Litoral to obtain a regulated IRR of 8.87% based on the 2006 MOU; and then applying the toll rate in Puentes del Litoral's expected cash flow projections to estimate the value of the Concession based on ex-post data. In its Second Report, BRG estimated the ex-post IRR to be 9.18%."[125]

120. The Claimant's experts explain further that:

> "Our damages assessment is not based on an *IRR in excess of 8.87%*. Instead, we undertake our assessment in a two-step approach:
>
> a. First, we calculate the toll rate that would allow the Concessionaire to obtain a regulated return of 8.87% based on the tariff scheme and framework set out in the 2006 MOU.
>
> b. Second, we apply the toll rate in PdL's expected cash flow projections to estimate the value of the Concession, and the ex-post rate of return."[126]
>
> "The Concessionaire's ex-post rate of return over its investments is expected to differ from the regulated IRR of 8.87% as PdL's cash flow projections incorporate contemporaneous data such as ex-post traffic and financial variables (e.g., deferred tax benefits, working capital adjustments), which are not reflected in the regulatory model. This interaction of ex-post data and financial variables are what can yield an ex-post IRR in the but-for cash flows that is either lower or higher than the regulatory IRR of 8.87%. In our second report, this ex-post IRR was 9.18%."[127]
>
> "Per the Tribunal's request, we have computed damages so that the *ex-post* IRR equals 8.87%. To do so we modify the two-step methodology described in par 73 and instead, using the same model, we calculate the toll rates that yield an ex-post IRR of 8.87%. Under this scenario, damages to Claimant decrease from USD 174.2 million to USD 169.4 million, a USD 4.8 million decrease. We note that in this case, the

[124] Decision on Liability, ¶ 439(d).
[125] Claimant's Post-Decision on Liability Response, II(A), p. 5 (Footnotes omitted).
[126] BRG's Implementations of the Directions on Quantum, ¶ 73 (Footnotes omitted).
[127] BRG's Implementations of the Directions on Quantum, ¶ 74 (Footnotes omitted).

> regulated rate of return, that is the IRR on the 2006 MoU cash flows will be lower at 8.60%."[128]
>
> "Responding to the parenthetical of the request, we calculate Claimant's damages and ex-post IRR after the implementation of the DoQ. That is, the adjustment in toll rates (section III.1.2), toll subsidy (section III.2.2), Bates's adjusted mid-point elasticity (section III.3.2), the working capital adjustment (section III.4.2), the correction to the calculation of costs (section III.5.2) and the US Prime rate as interest to update historical losses (section III.6.1). Together, these adjustments yield an ex-post IRR of 7.76%, which is lower than the Concession's original regulatory IRR of 12.94% and the 2006 MOU's regulatory IRR of 8.873%."[129]

121. The Respondent's experts submit that:

> "It is worth noting that the maximum IRR was 8.87 % and that there was no guarantee in the bidding terms and conditions as to a certain level of profitability, the Concession being a contract at risk. In this respect, PdL had already informed the rupture of the economic-financial equation of the Concession in July 2001. In this regard, the use of the 2006 LOU as a but-for scenario to re-establish the equilibrium of the Concession within the framework of the contractual renegotiation, even when it yields an IRR below 8.87 %, results in benefits for PdL that tend to correct variables that were among the risks assumed by the Concessionaire, such as the loss of income by PdL derived from the overestimation of traffic volumes in the bid. As already indicated, the application of a subsidy, which tends to increase the expected traffic, was not provided for in the bidding terms."[130]
>
> "In addition, under the Concession Contract, the value of category 5, 6, and 7 (heavy traffic) toll rates were equivalent, respectively, to 3, 4, and 5 times the value of category 2 (cars), while under the but-for model based on the 2006 LOU, as from September 2006, these values correspond to 5.25, 7, and 8.75 times the value of category 2, respectively. This amendment also deviates from the offer conditions under which the bidders submitted their bids and results in higher additional revenues for the Concessionaire. This is evidenced by the fact that the application of the 2006 LOU results in a significantly higher amount of damages than would be the case if the terms of the Concession Contract were applied." [131]

122. The Tribunal accepts the Claimant's revised calculation as consistent with its instructions. In its understanding, the use of *ex-post* data is helpful in this context to

[128] BRG's Implementations of the Directions on Quantum, ¶ 76 (Footnotes omitted).
[129] BRG's Implementations of the Directions on Quantum, ¶ 77 (Footnotes omitted).
[130] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 80 (Footnotes omitted).
[131] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 81 (Footnotes omitted).

avoid speculation. Use of *ex-post* data also answers at least in part the Respondent's point about assumed risks. While it is not disputed that the Concession Contract was a risk contract, it was also calculated based on a presumed rate of return. The revised calculations show this rate would have declined from the original offer and even from the 2006 MOU in the "but-for" scenario.

**(5) Adjustment of Working Capital**

123. In its Decision on Liability, the Tribunal requested that the Parties clarify the position regarding tax credit carryovers under Argentine law, given that, if such carryovers are limited in duration to five years, revised calculations would need to be made reflecting that limitation.[132]

124. The Claimant "agrees with the joint-experts' revised calculations which adjust BRG's Second Report Model by incorporating 'the expiration schedule of PdL's tax credits as of December 2005,' with the last credit expiring in 2010."[133]

125. The Claimant's experts elaborate:

> "We adjust the BRG Second Report Model by correcting our calculation of PdL's working capital by incorporating the expiration schedule of PdL's tax credits as of December 2005."[134]
>
> "In the BRG Second Report Model we include Pdl's tax credits in the working capital calculation since PdL would have had taxable profits after the renegotiation of the Concession. We therefore change the nature of the asset (i.e., the credits) from a 'non-current' asset in the actual scenario to a 'current' asset in the but-for scenario."[135]
>
> "As discussed at the Hearing, the Experts agree that PdL had ARS 135.6 million of net operating losses or tax credits as of December 2005 to be applied over the next years. These tax credits have a positive value as they can be used to deduct future tax liabilities when positive cash flows are achieved, increasing PdL's overall profitability and cash flows in a DCF valuation."[136]

[132] Decision on Liability, ¶ 439(e).
[133] Claimant's Post-Decision on Liability Response, II(B), p. 6 (Footnotes omitted).
[134] BRG's Implementations of the Directions on Quantum, ¶ 29.
[135] BRG's Implementations of the Directions on Quantum, ¶ 30.
[136] BRG's Implementations of the Directions on Quantum, ¶ 31 (Footnotes omitted).

> "PdL reflected uncertainty in its 2005 financial statements as to whether it would be able to use these accumulated tax credits. In the but-for scenario, however, such a provision would not have been made as PdL would have expected positive cash flows going forward as a result of the renegotiation, and thus would have expected to use the outstanding tax credits to its advantage. In other words, the accumulated tax credits would have been a current asset to the company, and not provisioned as a non-current asset."[137]

> "We have not considered the expiration of PdL's tax credit by including them in the working capital calculation of the BRG Second Report Model. In a further review of the audited financial statements, we identified a schedule where the total tax credit balance of ARS 135.6 million is broken down between different maturities between 2006 and 2010 (i.e., 5 years after 2005). We show a snapshot of PdL's 2005 audited financial statements in Figure 6 below."[138]

> "In this instance we adjust PdL's tax credits to reflect its expiration schedule. […]" [139]

126. The Respondent's experts note that:

> "We have included a carryover of the tax credits outstanding as of December 2005 to reduce the amounts of income tax due by PdL on the increased revenues derived from renegotiated toll rates over the next five years, as allowed under Argentine law. We have eliminated the adjustment to current deferred tax asset introduced by BRG in its second report. BRG has agreed."[140]

> "We agree with Bambaci and Dellepiane that, under the but-for scenario, PdL would be able to use its accumulated tax credits (or tax loss carryforwards) to reduce the amounts of income tax due on the increased income from the renegotiated toll rates over the next five years, as allowed under Argentine law. In the Joint Updated Valuation Model, we further agree that no adjustment should be made to the current deferred tax asset in 2005, consistent with our arguments in our Second Report. We therefore confirm to the Tribunal that at this instance the parties' experts have no differences in the calculation of the working capital variation in 2006."[141]

127. The Tribunal understands as a result of these submissions that the Parties have agreed on the calculation of the working capital variation in 2006, and accepts this agreement.

[137] BRG's Implementations of the Directions on Quantum, ¶ 32 (Footnotes omitted).
[138] BRG's Implementations of the Directions on Quantum, ¶ 33 (Footnotes and Figure 6 omitted).
[139] BRG's Implementations of the Directions on Quantum, ¶ 34 (Footnotes omitted).
[140] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 38.
[141] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 39.

**(6) Interest Rate on the Financial Assistance Loan**

128. The Tribunal, in its Decision on Liability, requested the Claimant "to confirm specifically the assumed rate of interest on the Financial Assistance Loan in that [the but-for] scenario."[142] It also requested that the Parties

> "confirm the Interest Rate for Loans to Leading Companies in the 25th percentile as published by the Argentine Central Bank, as referenced in Section 9 of the 2006 LOU. Assuming the 2006 LOU provisions have been correctly applied, the FAL rate reduction shall be unchanged from the earlier calculations performed by Claimant's experts. If, however, that rate has not been correctly applied, a new calculation shall be performed using the correct rate based on the 2006 LOU […]."[143]

129. The Claimant argues that BRG "estimate[s] the applicable interest rate of the FAL as the maximum between: a nominal rate of 9.5% and the interest Rate for Loans to Leading Companies in the 25th percentile as published by the Argentine Central Bank (BD-100)."[144] Lastly, the Claimant further notes that "BRG has also confirmed that no adjustments are required in the Updated Valuation Model on this issue."[145]

130. The Claimant's experts "confirm that the BRG Second Report Model estimates the applicable interest rate on the FAL as set forth in Section 9 of the 2006 MOU. That is, we estimate the applicable interest rate of the FAL as the maximum between (i) a nominal rate of 9.5%, and (ii) the interest rate for Loans to Leading Companies in the 25th percentile as published by the Argentine Central Bank." [146]

131. The Respondent's experts assert that they have "verified that the interest rate for loans to leading companies, 25th percentile, published by the Argentine Central Bank is the rate that has been applied in the but-for scenario on the Financial Assistance Loan", and that as they had "explained in [their] First Report, and to provide framework to this rate, the interest rate applicable to loans to leading companies, 25th percentile, published by

[142] Decision on Liability, ¶ 439(f).
[143] Decision on Liability, ¶ 439(f) (Paragraph citations omitted).
[144] Claimant's Post-Decision on Liability Response, II(C), p. 6 (Footnotes omitted).
[145] Claimant's Post-Decision on Liability Response, II(C), p. 7 (2nd paragraph) (Footnotes omitted).
[146] BRG's Implementations of the Directions on Quantum, ¶ 80. (Footnotes omitted)

the Argentine Central bank is lower than the rate set forth in Resolution 14 of 2003, which was already way below the rate applicable to shareholders loans".[147]

132. The Respondent puts forward that

> "[I]t is worth mentioning that a modification of the interest rate on the FAL duly determined by Resolution of the Public Works Secretariat ('SOP') No. 14 of 2003 ('Resolution 14') is well beyond the scope of full reparation under the law applicable to the calculation of damages. Indeed, the Tribunal determined that it would apply the customary international law standard under which reparation must wipe out all the consequences of the illegal act. Given that neither Claimant nor the Tribunal have considered Resolution 14 to be an illegal act under international law, in accordance with the applicable law there are no reasons to modify the interest rate on the FAL. The Tribunal found that the State's conduct in breach of the BIT was its failure to restore the economic equilibrium of the Contract in 2006. For this reason, the interest rate established in Resolution 14 cannot be a consequence of the failure to restore the equilibrium of the Contract in 2006 that had to be wiped out."[148]

> "The Decision on Liability is contradictory on this point. On the one hand, it admitted that Resolution 14 did not constitute a breach of the BIT. However, on the other hand, it concluded that it was reasonable to reduce the interest rate on the FAL established in Resolution 14, as the provisions of Resolution 14 purportedly exacerbated PdL's financial situation and made timely restoration of the economic equilibrium of the Contract even more necessary —when as a matter of fact it was the FAL that allowed the completion of the works and the commencement of the operational phase, in the face of PdL's failure to secure the financing undertaken at the construction phase— . The Tribunal made that decision without explaining how that would be in accordance with the law applicable to the determination of damages, under which only the consequences of the illegal act are susceptible of reparation under international law, or how that would be in accordance with the principle of causation that the Tribunal determined was applicable to the calculation of compensation."[149]

> "Moreover, the Tribunal stated that the FAL was 'modified by Resolution 14,' allegedly prejudicing PdL, without addressing the issues raised by Respondent. In this respect, Argentina explained that Resolution 14 did not increase the interest rate and that the FAL did not set any interest rates but it established that, once the bridge had opened to traffic, a certain procedure would be followed to establish the relevant interest rate. Such procedure was followed through relevant consultations to the Central Bank of the Argentine Republic

[147] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 83-84 (Footnotes omitted).
[148] Respondent's Post-Decision on Liability Brief, ¶ 63 (Footnotes omitted).
[149] Respondent's Post-Decision on Liability Brief, ¶ 64 (Footnotes omitted).

> ('BCRA') and the Bank of the Argentine Nation ('BNA') and subsequent technical reports, all of which resulted in the issuance of Resolution 14, with the applicable interest rate. […]"[150]
>
> "A reduction in the interest rate on the FAL in the but-for scenario as directed in the Decision on Liability, in addition to being unfounded and unsupported by the applicable law, is unreasonable if account is taken of the fact that the real interest rate of the 2006 Letter of Understanding was negative as from 2005, as confirmed by Claimant's experts. This reduction in the interest rate on the FAL in the but-for scenario increases the damages claimed by Claimant, as explained by experts Machinea and Schargrodsky."[151]
>
> "Additionally, the Tribunal stated that the terms of the FAL set out by Resolution 14 purportedly exacerbated PdL's financial situation, which is incorrect in accordance with the evidence in the record. In this connection, the Tribunal determined that the FAL allegedly had a 'high [] cost.' However, the rates in real terms on the FAL were lower than the rates on the loans granted by the shareholders to PdL. In other words, the rate on the FAL granted by the State at the request of PdL was more favourable than that on the shareholder loans to PdL."[152]

133. The Parties thus seem to agree on the correctness of the calculation according to the prescribed formula, but the Respondent argues that the FAL rate should not be reduced in the "but-for" scenario, on several grounds. In particular, it relies on the fact that the Tribunal did not find the FAL to be illegal. But that is not the issue in the "but-for" analysis. Rather, the Tribunal is seeking to determine on a non-speculative basis what the relevant conditions would have been under a scenario where the equilibrium would have been reestablished. For the same reasons that justify the reduction in the interest rate on shareholder loans in that scenario, the Tribunal considers that the FAL rate would also have been reduced. Accordingly, the Tribunal decides that no further change in the FAL rate is needed and that the prior calculation put forward by Claimant (based on the market rate) shall stand.

### (7) Effect of the Debt Overhang from the Pre-Operation Phase

134. In its Decision on Liability, the Tribunal asked the Claimant

> "to clarify the extent to which, if any, in the 'but-for' scenario there existed a debt overhang from the construction phase (whether to

[150] Respondent's Post-Decision on Liability Brief, ¶ 65 (Footnotes omitted).
[151] Respondent's Post-Decision on Liability Brief, ¶ 66 (Footnotes omitted).
[152] Respondent's Post-Decision on Liability Brief, ¶ 67 (Footnotes omitted).

> subcontractors such as Boskalis-Ballast, shareholders or Argentina under the FAL) that would presumably not have been present absent the cancellation of the IDB Loan and the effects of the economic emergency on Puentes' ability to retire such debt, and the impact any such overhang might have on the revenues Puentes would be required to earn in order to achieve the targeted IRR in that scenario."[153]

135. The Claimant argues that:

> "there is no 'debt overhang from PdL's pre-operation phase in the but-for scenario." This is so because under the "but-for" scenario, PdL's outstanding debt with Boskalis-Ballast is repaid in 2006, the Financial Assistance loan is repaid by April 2008, and the intercompany loans are repaid by August 2014, with BRG calculating a positive equity value of Puentes del Litoral as of August 2014, which is net of any outstanding debt, including the intercompany loans."[154]

136. More specifically, the Claimant's experts confirm:

> "[T]hat any debt overhang from PdL's pre-operation phase is repaid in the but-for scenario. Specifically:
>
> PdL's outstanding Boskalis-Ballast debt of ARS 70.6 million in 2005 is repaid in 2006 in the but-for scenario after the economic equilibrium of the Concession is restored.
>
> The outstanding shareholder loans of ARS 202.4 million in 2005 are assumed to be refinanced at market rates at the start of the but-for scenario in September 2006, and are repaid in August 2014 as we compute a positive equity value of PdL, which is net of any outstanding debt.
>
> The financial assistance loan is repaid by April 2008 in the but-for scenario of our implementation of the Tribunal's instructions in the Joint Updated Valuation Model."[155]

137. Moreover, the experts

> "[…] note that the but-for scenario prior to the renegotiation is premised on the actual financing employed by PdL in the construction of the bridge. That is, the IDB Loan did not materialize and […] PdL recurred to other financing alternatives such as the shareholder loans. Pdl's financing prior to the renegotiation was more expensive than expected prior to the economic crisis. For example, the IDB Loan rates

[153] Decision on Liability, ¶ 439(h).
[154] Claimant's Post-Decision on Liability Response, II(D), p. 8 (Footnotes omitted).
[155] BRG's Implementations of the Directions on Quantum, ¶ 83 (Footnotes omitted).

> ranged between 8 and 9%, whereas the shareholder loans rate was 15%. After the renegotiation, we assume PdL repays these loans at their actual interest rate and replaces those loans with financing at its cost of debt."[156]
>
> "Finally, we clarify that PdL's financing decisions and any potential debt overhang have no impact on the resulting toll rate (and in PdL's revenues) as the 2006 MOU is not impacted by PdL's debt/interest payments. That is, PdL's financing decisions have no impact on the target regulatory return of 8.87% according to the 2006 MOU, and the toll rate that results from the re-establishment of the equilibrium of the Concession." [157]

138. The Respondent's experts, on the other hand, note that:

> "The Tribunal considered it inappropriate to hold Argentina responsible for 100% of the damage and that consideration should be given to the way in which Webuild's claims as a creditor and the pre-operational financial difficulties of PdL in general should be taken into account, in recognition of the fact that PdL's economic challenges were not entirely of Argentina's creation and resulted in an overhang in the operational phase of the Project."[158]
>
> "[…] We understand that Claimant considers that the debt owed to Boskalis-Ballast Nedam is repaid in the but-for scenario and that the debt owed to the shareholders does not need to be adjusted. However, the PTN has requested us to analyze the Tribunal's concern regarding PdL's overhang from the construction phase."[159]
>
> "The bridge began to be operated in May 2003. Until then, Webuild had provided USD 13.0 million in loans to PdL at an annual rate of 15 % in US dollars. After the bridge began operations, Claimant provided an additional USD 9.3 million in loans to PdL at that same rate."[160]
>
> "According to PdL's audited financial statements as of December 2005 (the last available financial statements prior to the start of the quantum calculation), Webuild's loans amounted to USD 34.6 million, a sum significantly higher than the nominal value of the loans granted (USD 22.3 million) due to interest capitalization at an annual rate of 15 %. That is, interest on the USD 22.3 million in nominal value was capitalized up to December 2005 at an annual nominal rate of 15 % in US dollars. By difference, it can be calculated that, PdL's debt with

[156] BRG's Implementations of the Directions on Quantum, ¶ 84 (Footnotes omitted).
[157] BRG's Implementations of the Directions on Quantum, ¶ 85 (Footnotes omitted).
[158] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 85 (Footnotes omitted).
[159] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 87 (Footnotes omitted).
[160] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 88 (Footnotes and Table 6 omitted).

> Webuild increased by USD 12.4 million due to interest, which accounted for 55.4 % of the nominal value of the loans."[161]
>
> "One way of partially assessing, in the but-for scenario, the debt overhang from the construction phase that would presumably not have been present absent the cancellation of the IDB Loan and the effects of the economic emergency on PdL's ability to repay such debt, is assuming that the debt incurred by PdL could have been raised at a rate lower than the 15 % rate fixed by PdL's shareholders."[162]
>
> "It is reasonable to assume that, in the but-for scenario, the interest rate on the loans granted to PdL by the shareholders in the construction phase would have been a market rate instead of an annual nominal rate of 15 %. For instance, the average interest rate for 30-day loans in US dollars, 25th percentile, for the year 1998, to leading companies was an annual nominal rate of 8.22 %. In addition, the interest rates under the agreement entered into with the IDB were the 6-month LIBOR rate + 5.25 % for the A loan and the 6-month LIBOR rate + 4.5 % for the B loan."[163]
>
> "If we recalculate interest on the loans granted by Webuild in the pre-operation phase capitalized up to December 2005, assuming that the shareholders granted the loans at the abovementioned market rates, the damage incurred by Webuild as a creditor is reduced. However, if we recalculate the debt owed to Webuild as of December 2005, the damage incurred as a shareholder also changes since, in that case, PdL's total outstanding debt as of December 2005 is lower. In order to calculate the but-for value of equity, the net debt outstanding and the interest accrued thereon to be paid to all of PdL's creditors before any distribution of capital or cash can be made should be deducted (total debt minus cash). As already explained in Section IV.I, in order to calculate the net debt as of August 2014, we update the net outstanding debt as of December 2005, translated into US dollars, at the yield rate on 5-year US Treasury bonds."[164]
>
> "If we introduce these changes to the calculation of Webuild's loans, our estimated total damages for Claimant as of August 2014 are reduced from the amount of USD 72 million […]. In addition, if we adjust BRG's damage calculation for the debt overhang from the construction phase that would presumably not have been present absent the cancellation of the IDB Loan and the effects of the economic emergency on PdL's ability to repay such debt, the total

[161] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 89 (Footnotes omitted).
[162] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 90.
[163] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 91 (Footnotes omitted).
[164] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 92.

> damage for Claimant based on BRG's assumptions is reduced from USD 114.8 million as of August 2014 […]." [165]

139. The Respondent concludes:

> "The debt to Boskalis-Ballast Nedam, the FAL and the shareholder loans at the construction stage relate to a period in which the Concession did not depend on toll rates (as the bridge had not been completed as yet), but it was to be financed with the subsidy and the funding that PdL undertook to secure and whose arrangement was at its own risk. The law applicable to the determination of damages identified by the Tribunal in its Decision on Liability and its finding that Argentina is not liable for 100% of the damage require isolating the effects on compensation caused by the debt overhang from the pre-operation phase and those damages resulting from causes not attributable to the State, such as the economic crisis and PdL's failure to secure financing during the initial years of the Concession."[166]

> "In sum, under the international law applicable to the calculation of compensation '[i]t is only '[i]njury ... caused by the internationally wrongful act of a State' for which full reparation must be made.' In its Decision on Liability, the Tribunal concluded that '[m]any tribunals have emphasized that while damages are not always susceptible of being quantified with complete precision, they need to be reasonable in amount and not too remote.' In the instant case, PdL's failure to secure financing and the debt overhang from the construction phase were not caused by the act identified by the Tribunal as a breach of the BIT, that is, the failure to restore the Concession's economic and financial equilibrium by 2006, but by PdL's business decisions and macroeconomic factors."[167]

> "In addition, the principles of proportionality and reasonableness apply to the instant case. It would be reasonable and proportional to deduct a percentage from the total amount of damages, given the problems arising from PdL's failure to obtain the necessary financing and the debt overhang from the construction phase."[168]

> "[…] The approach is based on the assumption in the but-for scenario that the loans granted to PdL by the shareholders in the construction phase were made at a market rate, rather than at an annual nominal rate of 15%. This approach results in a reduction of the total damage estimated for Claimant, as shown in Table 8 of the above-mentioned report. However, this adjustment—which would be the minimum indispensable adjustment to be made—does not capture all the effects

[165] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 93-94 (Footnotes and tables omitted).
[166] Respondent's Post-Decision on Liability Brief, ¶ 7 (Footnotes omitted).
[167] Respondent's Post-Decision on Liability Brief, ¶ 16 (Footnotes omitted).
[168] Respondent's Post-Decision on Liability Brief, ¶ 17 (Footnotes omitted).

of PdL's financing problems and debt overhang from the construction phase, but only a part of them (the part related to the shareholder loans). Looking only at Webuild's loans, it can be noted that PdL's debt to Webuild that would not have arisen absent the cancellation of the IDB loan and the economic emergency accounts for between 13.6% and 16.1% of Webuild's total claims as of 31 December 2005."[169]

"However, this does not capture the effect of the debt overhang from the construction phase with subcontractors or Argentina under the FAL that would not have arisen absent the cancellation of the IDB loan and the effects of the economic emergency. In order to reflect such impact, it will be necessary to apply a reduction percentage to the total amount of damages to be determined by the Tribunal, in line with the above-cited investment tribunals' decisions, which have applied reduction percentages ranging between 25% and 50%."[170]

"It is worth bearing in mind that a portion of the debt overhang was a product of the higher rates at which PdL borrowed from its own shareholders, as a result of PdL's failure to secure third-party financing and the overestimations in its bid traffic projections, which even led PdL, as early as in June 2001, to inform of the disruption of the economic and financial equation of the Concession Contract."[171]

"The Tribunal states that it finds such characterisation of PdL's economic difficulties odd 'since the Project was not completed at that time and Puentes therefore had no operating revenues.' Then, the Tribunal acknowledges that such financial problems threatened the completion of construction, but it seems to interpret that they were purportedly temporary, as the project entered into operation in 2003."[172]

"However, the disruption of the economic and financial equation reported by PdL, far from being a temporary difficulty, referred specifically to the unviability of the project in the long term, due to PdL's failure to secure third-party financing, as a result of the overestimation in the bid revenues."[173]

"Indeed, the Concessionaire's efforts to secure the IDB loan were fruitless precisely because the multilateral organisation detected serious repayment risks as the traffic projections were overly optimistic. In this respect, while it is true that the project went into

[169] Respondent's Post-Decision on Liability Brief, ¶ 18 (Footnotes omitted).
[170] Respondent's Post-Decision on Liability Brief, ¶ 19.
[171] Respondent's Post-Decision on Liability Brief, ¶ 20 (Footnotes omitted).
[172] Respondent's Post-Decision on Liability Brief, ¶ 21 (Footnotes omitted).
[173] Respondent's Post-Decision on Liability Brief, ¶ 22 (Footnotes omitted).

operation in 2003, this was only possible thanks to the FAL requested by PdL."[174]

"The Tribunal found that the Argentine Republic breached the FET standard as it did not restore the economic equilibrium of the Concession by September 2006. Hence, it is worth analysing the specific scope of such renegotiation, which originated in the enactment of the Emergency Law, as pointed out by the Tribunal."[175]

"In this connection, the Emergency Law, which abolished the peg of the Argentine peso to the US dollar, provided that any dollar adjustment clauses or clauses based on price indexes of other countries set forth in contracts entered into by the Public Administration were rendered invalid, while the relevant tariffs were set in Argentine pesos at an exchange rate of ARS 1 = USD 1. In addition, the Law authorised the Executive Branch to renegotiate any contracts encompassed by such provisions."[176]

"For the same reasons, as duly pointed out by the Argentine Republic, some arbitrary assumptions adopted by Dellepiane and Bambaci in their but-for scenario are likewise inadmissible. These assumptions, which were not analysed by the Tribunal, include:

i. The alteration of the multipliers of heavy traffic categories, vis-á-vis those established in the Contract.

ii. The calculation of an alleged September 2007 equilibrium toll rate, which purportedly restores the economic and financial equilibrium since the commencement of the Concession, as recognised by Claimant's experts. Such approach implicitly contains a calculation of damages for periods prior to September 2006, which is inconsistent with the Tribunal's finding that the alleged breach of the BIT took place on that date."[177]

"In sum, the values arising from the but-for model defined as per the Tribunal's directions contain benefits for Concessionaire that fall outside the scope of the renegotiation process, for whose lack of completion the Tribunal found the Argentine Republic liable. As pointed out by the Tribunal, the purpose of that renegotiation 'would not be the improvement of any company's position, but merely the restoration of the equilibrium.' However, there can be no doubt that the above-mentioned benefits unduly improve the company's position as they tend to partially remedy aspects that were part of the risks assumed by Concessionaire, such as the overestimation of the bid

[174] Respondent's Post-Decision on Liability Brief, ¶ 23 (Footnotes omitted).
[175] Respondent's Post-Decision on Liability Brief, ¶ 24 (Footnotes omitted).
[176] Respondent's Post-Decision on Liability Brief, ¶ 25 (Footnotes omitted).
[177] Respondent's Post-Decision on Liability Brief, ¶ 28 (Footnotes omitted).

traffic and its failure to secure the financing to which it had committed, all of which is compounded by the fact that they violate the principle of equality among bidders in the bidding process."[178]

"Therefore, the Tribunal is requested to contemplate these issues within the framework of its finding in the Decision on Liability that the Argentine Republic cannot be held liable for 100% of the damage, in order to remedy the points identified in the paragraph above."[179]

"As an additional matter, it is worth mentioning the petition for the commencement of bankruptcy proceedings filed by subcontractors Boskalis-Ballast Nedam against PdL and the subsequent reorganisation proceedings which, according to the Tribunal, could have been avoided if the economic equilibrium of the Concession had been restored in 2006 through the implementation of the 2006 Letter of Understanding. Such statement is not supported by any reasoning whatsoever and contradicts the evidence in the record."[180]

"First, there is an inescapable temporal issue. The implementation of the Letter of Understanding of May 2006 could never have prevented an event that took place prior to it: the petition for the commencement of bankruptcy proceedings filed by Boskalis-Ballast Nedam against PdL in December 2005. This is a factual impossibility."[181]

"The Tribunal does not explain how the 2006 Letter of Understanding could have prevented Boskalis-Ballast Nedam's petition for the commencement of bankruptcy proceedings against PdL, when such petition was filed in 2005, on the basis of PdL's failure to pay a 2003 ICC award in favour of Boskalis and Ballast Nedam in which PdL was held liable for its failure to pay debts for the November 2000-May 2001 period (the period prior to the operational phase). It is illogical and impossible for a subsequent event—the 2006 Letter of Understanding—to have prevented a prior event— Boskalis-Ballast Nedam's petition for the commencement of bankruptcy proceedings in 2005—."[182]

"The 2003 ICC award was explicit in stating that, by mid-2001, the State had already paid almost all of the subsidy and that PdL's failure to pay Boskalis-Ballast Nedam was not therefore attributable to the State, but to PdL's own actions. Such finding is not modified in any manner by the fact that PdL filed reorganisation proceedings in 2007, as was also confirmed by the tribunal in *Hochtief*. PdL filed reorganisation proceedings precisely in order to avoid the declaration of bankruptcy petitioned by Boskalis and Ballast Nedam in 2005 in order to collect the 2003 ICC award, by which PdL had been ordered

[178] Respondent's Post-Decision on Liability Brief, ¶ 29 (Footnotes omitted).
[179] Respondent's Post-Decision on Liability Brief, ¶ 30 (Footnotes omitted).
[180] Respondent's Post-Decision on Liability Brief, ¶ 31 (Footnotes omitted).
[181] Respondent's Post-Decision on Liability Brief, ¶ 32 (Footnotes omitted).
[182] Respondent's Post-Decision on Liability Brief, ¶ 33 (Footnotes omitted).

> to pay the subcontractors on account of debts arising from services rendered between November 2000 and May 2001. In other words, the events leading to PdL's filing a petition for reorganisation proceedings predate the 2006 Letter of Understanding and the operation phase (they date back to the construction phase, in which the State paid the subsidy in its entirety, but PdL failed to obtain the financing it had committed to)."[183]
>
> "Second, the Tribunal contradicted itself in establishing that Respondent should have restored the equilibrium of the Concession by 2006 and that the 2006 Letter of Understanding should have been implemented, but determining at the same time that 'the situation of Puentes with its subcontractors and suppliers and the filing of a petition for the commencement of insolvency proceedings [...] may have complicated or prolonged the renegotiation process to some extent.' If the situation with the subcontractors, which filed a petition for the commencement of bankruptcy proceedings in late 2005, was an event that may have complicated or prolonged the renegotiation, it cannot be understood how the Tribunal decided that the 2006 Letter of Understanding should have been implemented—as this Letter of Understanding was the most heavily affected by such circumstances—instead of a subsequent one, such as the 2007 Letter of Understanding or the 2008 Transitory Agreement, so that the parties could implement a viable agreement, as the 2006 Letter of Understanding could not prevent PdL from filing for reorganisation proceedings on account of its failure to pay subcontractors."[184]
>
> "Third, the Tribunal's finding contradicts the facts proven in this arbitration concerning the serious financing problems during the initial years of the Concession—that is, the construction phase—which were the main reason for PdL's failure and were entirely attributable to Concessionaire, in accordance with the allocation of risks explicitly set out in the Concession Contract."[185]
>
> "Finally, as explained in the section below, both PdL and the State duly stated that the 2006 Letter of Understanding did not allow the repayment of PdL's debt to Boskalis-Ballast Nedam and that the Letter of Understanding could not become effective absent a resolution of the situation with the subcontractors."[186]

140. The Tribunal considers it impossible to determine with absolute precision the effect of the debt overhang on PdL upon the partial restoration of the Concession's equilibrium in 2006. First of all, although Argentina puts full responsibility on PdL and its

[183] Respondent's Post-Decision on Liability Brief, ¶ 34 (Footnotes omitted).
[184] Respondent's Post-Decision on Liability Brief, ¶ 35 (Footnotes omitted).
[185] Respondent's Post-Decision on Liability Brief, ¶ 36 (Footnotes omitted).
[186] Respondent's Post Decision on Liability Brief, ¶ 37.

shareholders for the difficulties encountered in financing the Project, the evidence in that regard is mixed, and suggests that Argentina's deteriorating economic position was a factor in the IDB's decision not to proceed with its loan. Thus, the Tribunal considers that the problems of that era were not all of PdL's making, but likely were a result of both PdL's actions and the Argentine economic picture in the years prior to the declaration of the emergency. On the other hand, Argentina is right to suggest that had PdL not had to take out shareholder loans or the FAL, its borrowing costs would have been lower. The Tribunal also considers that the assumptions made by the Claimant's experts regarding the timing of restructuring of subcontractor debt and repayment of such debt in the wake of the 2006 MOU are unduly optimistic. Although some of these costs are reduced in the "but-for" scenario, the Tribunal is not convinced that PdL would be in a position to eliminate subcontractor and other debts as quickly as the Claimant's experts assume; while shareholder loans could presumably have been renegotiated fairly quickly, debt to third parties would likely take more time to renegotiate.

141. The Tribunal is aware that Boskalis-Ballast filed a petition of bankruptcy in 2005, but proceedings involving PdL in relation to that petition, as the Tribunal understands it, did not appear to move forward until 2007. Thus, in that period of time, PdL would have been able to address the situation with this subcontractor in due course, but the apparent assumption of the Claimant that subcontractor debt would be fully paid off in short order seems unrealistic. The Tribunal also takes note of the fact that capitalization of interest by the Claimant on its loans resulted in the principal of the loans increasing by more than 50%. The Respondent has calculated that the shareholder debt incurred as a result of the cancellation of the IDB Loan and the economic emergency represented between 13.6 and 16.1% of Webuild's claims. That, coupled with the Tribunal's conclusion that the Claimant's experts are unduly optimistic about how quickly subcontractor debt would be repaid in the "but-for" scenario, leads the Tribunal to conclude that 20% is the appropriate share of the Claimant's responsibility. The Respondent has suggested a figure of 25 to 50%, but this seems excessive based on the facts and circumstances of this case.

### (8) Interest Rate on Historical Losses

142. In its Decision on Liability, the Tribunal indicated to the Parties that

> "[h]istorical losses are to be calculated using a risk-free standard commercial rate of interest on or around the Valuation Date." It also invited further submissions from the Parties "as to what a non-risk-based normal commercial rate around the Valuation Date in 2014 would have been", observing that "[a] short-term instrument such as a one-year U.S. Treasury bill would appear to be inapposite for a long-term investment and in light of the standard of a commercial rate of interest; the Parties should therefore consider rates based on instruments of longer tenor, *e.g.*, five or ten years. Alternative calculations should be provided using the chosen rates."[187]

143. The Claimant argues that:

> "[r]egarding the interest on historical losses, Webuild requests the use of the annual average U.S. Prime rate between 2006 and 2014, which ranges between 3% and 8.0%, as BRG justifies. In this sense, BRG explains that the US Prime rate 'reflects the rate that commercial banks in the United States charge their most creditworthy corporate customers (or clients)' and therefore 'excludes equity holder related risks from PdL's daily operations in the interest rate applied and excludes most debt holder related risks (as it is a benchmark for the most creditworthy U.S. corporate customers).'"[188]

144. Its experts substantiate this further:

> "Following the Tribunal's instruction to provide a non-risk-based normal commercial rate, we suggest the use of the observed average U.S. Prime rate between 2006 and 2014 ranging between 3% to 8%. The U.S. Prime rate reflects the rate that commercial banks in the United States charge their most creditworthy corporate customers (or clients). Commercial banks usually apply a premium to the U.S. Prime rate to loans lent to less creditworthy corporations. The U.S. Prime rate therefore excludes equity holder related risks from PdL's daily operations in the interest rate applied and excludes most debt holder related risks (as it is a benchmark for the most creditworthy U.S. corporate customers)."[189]

> "We note however that PdL's estimated cost of debt, which also excludes the equity risk is higher than the US Prime rate since PdL is a company operating in the Argentine transportation sector, therefore

[187] Decision on Liability, ¶ 439(j) (Citation omitted)
[188] Claimant's Post-Decision on Liability Response, II(E), pp. 8-9 (Footnotes omitted).
[189] BRG's Implementations of the Directions on Quantum, ¶ 40 (Footnotes omitted).

> bearing industry and country risk which is not considered in the US Prime. […]"[190]
>
> "MS suggest the use of the annual average 5-year U.S. Treasury rate, ranging between 0.8% and 4.8% throughout 2006 and 2014. In Figure 7 below we compare the evolution of this rate with the US Prime and MS's own estimation of PdL's after tax cost of debt of 9.2% in 2014."[191]
>
> "We disagree with the use of a U.S. Treasury rate as it is not a risk-free commercial rate as instructed by the Tribunal. The rate proposed by MS is the rate at which the U.S. Treasury obtains funds. Corporations do not have access to this rate. This is evident from the average premium between the US Treasury bonds and the US Prime rate that Figure 7 below shows. That is, an average premium of 2.2%. However, such a rate contradicts MS's own opinion of the reasonable cost of debt at which PdL would be able to obtain financing. MS compute PdL's cost of debt at 9.2% as of 2014, which is 7.6% higher than the 2014 5-year U.S. Treasury rate and 6.0% higher than the 2014 U.S. Prime rate."[192]

145. The Respondent's experts argue that:

> "In the opinion of the Tribunal, Argentina's position that the risk profile of historical losses is different from that of future losses is valid, and the Tribunal further determined that a risk-free rate is more appropriate than a risk-adjusted rate to update said losses. Besides, the Tribunal also held that the application 'a normal commercial rate of interest' does not mandate a WACC."[193]
>
> "Consequently, the Tribunal concluded that historical losses shall be calculated based upon a risk-free standard commercial rate of interest on or around the valuation date."[194]
>
> "In view of the Tribunal's instruction that the parties should consider risk-free standard commercial rates of interest based upon longer-term instruments, i.e. five- or ten-year instruments, in our opinion the average annual yield on 5-year US Treasury bonds is a risk-free standard commercial rate appropriate to update but- for cash flows for each year from 2006 to the 2014 valuation date. Over this period, such rate ranged from 0.76 % to 4.75 %."[195]

[190] BRG's Implementations of the Directions on Quantum, ¶ 41 (Footnotes omitted). *See also ibid*, ¶ 42 and Table 6.
[191] BRG's Implementations of the Directions on Quantum, ¶ 43 (Footnotes omitted).
[192] BRG's Implementations of the Directions on Quantum, ¶ 44 (Footnotes and Figure 7 omitted).
[193] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 43 (Footnotes omitted).
[194] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 44 (Footnotes omitted).
[195] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 45 (Footnotes omitted).

> "Besides, the LIBOR rate (London Interbank Offered Rate), while in effect, has been one of the most common benchmarks in global contracts at variable rates and frequently used as a risk-free commercial rate in arbitration cases. This rate derived from the rate at which banks offered unsecured funds to other banks in the wholesale money market or interbank market. While this rate was discontinued at the end of 2021, for the 2006 to 2014 update period it was still in effect. Although the longer LIBOR rate was a 12-month rate, in our opinion it would be a reasonable commercial risk-free alternative to the 5-year US Treasury yield rate. Over said period, this rate ranged from 0.56 % to 5.33 %. We have incorporated an option to use this rate in the Joint Updated Valuation Model."[196]

> "BRG proposes the annual average of the US Prime rate to calculate interest on the historical losses from 2006 to 2014, which ranged from 3.3 % to 8.0 %."[197]

> "The US Prime rate is a domestic rate charged by US banks. This implies that the US Prime rate has a built-in mark-up, which is managed by and will depend on each bank's funding system. The US Prime rate is set by reference to the federal funds rate plus a spread. It is a short-term rate used as a basis for pricing various short- and medium-term loan products."[198]

> "In our opinion, the US Prime rate used by BRG is not a risk-free commercial interest rate appropriate to update historical damages. Rather, a rate should be used to maintain the time value of money."[199] "Besides, according to the Federal Reserve of the United States, the US Prime rate is one of several base rates used by banks to price short-term business loans. The Tribunal rejected the use of a short-term rate to calculate historical losses, and instead considered it appropriate to use rates based on longer-term instruments. As the US Prime is a short-term rate, it is also contrary to the Tribunal's instructions. [200]

146. This leads the Respondent to conclude that:

> "The yield on the US Treasury bills is a commercial risk-free rate frequently used in investment arbitration, and the 5-year term is consistent with the Tribunal's direction that rates based on five- or ten-year instruments should be considered for the adjustment of historical losses."[201] "The US Prime interest rate proposed by experts Bambaci and Dellepiane is at odds with the Tribunal's directions.[…]"[202] "In addition, the US Prime rate has virtually no application in investment

[196] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 46 (Footnotes omitted).
[197] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 47.
[198] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 48 (Footnotes omitted).
[199] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 49.
[200] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 50 (Footnotes omitted).
[201] Respondent's Post-Decision on Liability Brief, ¶ 81 (Footnotes omitted).
[202] Respondent's Post-Decision on Liability Brief, ¶ 82.

> arbitration. For this reason, should the Tribunal change its decision and decide to adopt a short-term rate (contrary to its direction to the parties that they must consider rates based on five- or ten- year instruments), LIBOR is more frequently used in investment arbitration."[203]

147. The Tribunal agrees with the Respondent that the U.S. Prime rate is not a relevant rate for a case of this nature. But it also agrees with the Claimant that the Treasury rate is not a risk-free commercial rate. The Tribunal is persuaded that, even though it is not a long-term rate, the 12-month LIBOR rate provides a more suitable rate for historical losses. Although LIBOR was discontinued at the end of 2021, it is fully available for the historical period of 2006-2014. Accordingly, the Tribunal decides that historical losses should be calculated according to the 12-month LIBOR rate for that period.

**(9) Discount Rate**

148. In its Decision on Liability, the Tribunal confirmed that the relevant discount rate to be applied when calculating damages should be the WACC (the weighted average cost of capital) of the Claimant.[204]

149. The Claimant's experts put forward that:

> "Following the Tribunal's instructions to apply the WACC calculated by the Claimant's experts, our revised calculation of damages in the Joint Updated Valuation Model discounts future projected losses by applying the WACC calculated by BRG of 8.9%."[205] "In spite of the Tribunal's directions to use Claimant's experts' WACC, MS compute an alternative WACC rate of 16.1% as of 2014 to discount future projected losses. The use of MS WACC rate reduces damages from USD 174.2 million to USD 161.2 million, a USD 13.0 million reduction. Figure 8 below compares BRG and MS's WACC as of 2014."[206]

[203] Respondent's Post Decision on Liability Brief, ¶ 83 (Footnotes omitted).
[204] Decision on Liability, ¶ 439(k).
[205] BRG's Implementations of the Directions on Quantum, ¶ 46 (Footnote omitted).
[206] BRG's Implementations of the Directions on Quantum, ¶ 47. Figure 8 is part of ¶ 47.

**Figure 8: BRG and MS WACC comparison**

| | BRG | MS |
|---|---|---|
| Risk Free Rate | 2.54% | 2.68% |
| Market Risk Premium | 5.00% | 5.48% |
| Beta Re-Levered- Adjusted to One | 0.92 | 1.42 |
| Country Risk Premium | 4.94% | 9.49% |
| **Cost of Equity** | **12.06%** | **23.97%** |
| | | |
| Cost of Debt | 9.48% | 14.17% |
| *Industry Premium* | 2.00% | 2.00% |
| TAX Rate Argentina | 35.00% | 35.00% |
| **Cost of Debt (After Tax)** | **6.16%** | **9.21%** |
| | | |
| Debt / Total Capital | 53.35% | 53.59% |
| Equity / Total Capital | 46.65% | 46.41% |
| **WACC** | **8.91%** | **16.06%** |

Source: Joint Updated Valuation Model (BD-139/MS-31)

"In section VI.6. of our second report and slides 29-32 of our direct presentation we have discussed the differences in the discount rate with MS's assessment. We reproduce a summary of these in the paragraphs below:

MS overestimate the country risk premium of 13.5% that is commensurate with a default- level or financial distress premium. This is inconsistent with the risks that PdL would have faced in a but-for scenario where the economic equilibrium of the Concession Contract was restored. It is also inconsistent with the country risk premium implied by YPF's bonds at that time of 4.2%. Indeed, MS's country risk premium estimate results in a cost of debt of 14.2%, which is similar to the interest rate of Claimant's intercompany loans of 15% which reflected the financing risks prevalent at the time of the 2001 crisis, when the bridge was yet not operational, and the economic equilibrium of the project had not yet been restored. Such an assumption is inconsistent with the but-for scenario.

MS incorrectly estimates a beta of 1.42 using an 'engineering and construction' sample from Professor Damodaran that is not comparable to PdL's business. In contrast, we target our sample according to the GICS code 20305020 for roads, tunnels and railroads. Additionally, MS disregard the beta adjustment-to-one which is commonly applied to long-term valuations."[207]

[207] BRG's Implementations of the Directions on Quantum, ¶ 48 (Footnotes omitted). However: Table 8 above gives an MS country risk premium of 9.49%.

> "We therefore conclude that MS WACC does not accurately reflect Claimant's WACC as of 2014 in the but-for scenario in which the renegotiation agreement would have been implemented."[208]

150. The Respondent's experts claim that:

> "[t]he discount rate should be calculated based on the risk to which shareholders and creditors are exposed as at the valuation date. As the valuation date changes, the WACC must also be recalculated because all of its parameters change."[209]

> "In our previous reports, we presented the calculation of the cost of equity as of August 2014 because we were calculating only cash flows to equity, and there was no need to calculate the WACC, given the methodology selected. The cost of equity is one of the components of WACC calculation. In Table 4, we present our estimate of the cost of debt using the same calculation methodology as BRG, but based on our country risk premium assumptions."[210]

> "As we analyzed two alternative valuation dates—August 2014 and September 2006—we calculated the WACC as of these two dates, as shown in the table below. We elaborate further on the WACC calculation in Appendix A of this report."[211]

> "In our opinion, the 8.91 % WACC as of August 2014 calculated by BRG to discount future cash flows projected as from the termination statement, underestimates the risk implied therein. We believe BRG underestimates both the cost of equity and the cost of debt. The Tribunal has not examined or issued an opinion on the assumptions made by BRG for the calculation of the WACC's different components, despite the relevance of these assumptions for the valuation result."[212]

> "We basically disagree with BRG in the country risk assumption which impacts on the calculation of both the cost of equity and the cost of debt. Bambaci and Dellepiane estimated a 4.94% country risk premium as of August 2014, which the experts maintain constant for the 2014-2023 period, whereas professor Damodaran estimated an 8.33 % country risk premium as at February 2014 for Argentina, upon the basis of the same volatility methodology used by BRG."[213]

[208] BRG's Implementations of the Directions on Quantum, ¶ 49.
[209] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 53.
[210] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 54 (Footnotes and Table 4 omitted).
[211] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 55 (Footnotes and Table 5 omitted).
[212] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 56 (Footnotes omitted).
[213] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 57 (Footnotes omitted).

"Moreover, BRG's calculation of beta underestimates the true risk for PdL. Bambaci and Dellepiane estimate an average beta of 0.93 for the 1998-2014 period, that is, they assume that PdL is less volatile than the market. In addition, the adjustment as a beta reversion-to-one they make is a long term adjustment when infinite cash flows are estimated; however, this is not the case because the terms of the Concession provide for an expiration date. In the case at issue, the latest cash flow (2023) is a few years away from the 2014 valuation date; therefore, it would not be appropriate to make adjustments upon the basis of the beta long term trend."[214] "With regard to the second WACC component, the cost of debt (Kd), Bambaci and Dellepiane made a 'synthetic' estimation of such cost projecting interest rates ranging from 5.78 % to 8.04 % after income tax for each year, where the average rate is 6.76 % for the 2006-2014 period, based upon the following formula:

Kd = Rf + 2.0 % Industry premium + Country risk premium"[215].

"As shown, this approach adds the industry risk faced by lenders and the country risk to the risk-free rate. Bambaci and Dellepiane assume a 2.0 % industry risk calculated by Professor Damodaran for the companies operating in the transportation industry in the United States. Bambaci and Dellepiane estimate the country risk based upon a relative volatility approach, resulting in 4.94 % as of August 2014, as pointed above. The problem is that by using year the average [*sic*] volatility from the longest period available to date for each, the volatilities vary very little from year to year. That is, from 2007 to 2008, the data from several years ago are repeated and the only different data are those incorporated for 2008. As a result, volatilities capture virtually no changes in country risk from one year to the next."[216]

"In our First and Second Reports, we argued extensively that country risk must be estimated based upon the information available as of the valuation date and that the country risk premium estimated by Bambaci and Dellepiane based upon the relative volatility approach, which is not the most common method for calculation of the country risk premium, underestimates the true risk. This is indisputable in the light of what actually happened, as actual levels of country risk were higher than the BRG estimate. However, the Tribunal has not discussed such essential assumption."[217] "Thus, in our opinion, the country risk premium proposed by Bambaci and Dellepiane is not appropriate […]."[218]

[214] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 58 (Footnotes omitted).
[215] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 59 (Footnotes omitted.)
[216] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 60 (Footnotes omitted).
[217] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 61 (Footnotes omitted).
[218] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 62.

151. The Tribunal is not persuaded that the WACC calculated by the Claimant's experts requires recalculation. It is sufficiently persuaded by the Claimant's arguments that country risk premium and the *beta* for volatility have been appropriately treated in its computation. Accordingly, the discount rate to be used in the "but-for" scenario should be the WACC of 8.9%, rather than the alternative put forward by the Respondent.

**(10) Compounding**

152. The Tribunal, in its Decision on Liability, determined that annual compounding of interest is appropriate.[219]

153. The Claimant's experts conclude that "[f]ollowing the Tribunal's instructions, our revised calculation of damages in the Joint Updated Valuation Model applies annual compounding of interest."[220]

154. The Respondent's experts put forward that "[a]ccording to the Tribunal's instruction, we assume annual capitalization to update historical cash flows from September 2006 to the valuation date. We agree with BRG's capitalization approach up to the valuation date."[221]

155. The Parties thus appear to agree on the calculation that results from the implementation of annual compounding of interest up to the valuation date, and the Tribunal accepts this agreed calculation.

**(11) Use of Inapplicable Indices from Decree No. 1295/02 to Update Expenses; Error in Not Annualizing**

156. This item is essentially in the nature of an agreed correction.

157. The Claimant's experts submit that "[a]lthough the Tribunal's instruction is to maintain all other assumptions in the BRG Second Report Model unchanged, we agree with MS's implementation and correction to the model's annualization of expenses in 2014 and the calculation of the indices used from Decree No. 1295/02. We therefore agreed with MS to implement these corrections to the BRG Second Report Model. These

[219] Decision on Liability, ¶ 439(l).
[220] BRG's Implementations of the Directions on Quantum, ¶ 51.
[221] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 63-64 (Footnotes omitted).

adjustments reduce damages from USD 174.2 million to USD 173.2 million, a USD 0.7 million decrease."[222]

158. The Respondent's experts note that

> "[t]he Tribunal indicated that, except as set forth in the Decision on Liability, all other assumptions in the calculation of damages in the 'but-for' scenario shall remain unchanged. […] In our Second Report, we mentioned that BRG mistakenly calculated the road, bridge and resurfacing indices established in Presidential Decree No. 1295/02, which were used to update certain expenses and in the calculation of administrative costs as of 2014. Indeed Bambaci and Dellepiane corrected these mistakes over their presentation at the Hearing. In line with BRG, in our opinion such adjustment should be made in the Joint Updated Valuation Model, and Bambaci and Dellepiane have agreed to this. […] Bambaci and Dellepiane admitted and corrected these mistakes and, therefore, there is no discrepancy with BRG on this issue."[223]

159. The Tribunal accepts the agreed correction to the Joint Updated Valuation Model.

### (12) Pre- and Post-Award Interest

160. The Parties have also made submissions on pre- and post-award interest, from the date of valuation to the date of the Award, and post-Award.

161. The Claimant argues that:

> "[i]n addition to the determination of the interest rate on historical losses, Webuild requests that in deciding the pre- and post-award interest rate, the Tribunal keep in mind that:
>
> - Argentina's agreed interest rate in the settlement with Repsol is 8.75%;
>
> - For US dollar-denominated debt, Argentine commercial courts typically grant an average interest rate of 7%, with a minimum of 6%. Of relevance, these percentages are pure interest rates, which means that they do not take into account US inflation;
>
> - In 2011, an ICSID Tribunal in a separate arbitration involving the same Parties and Treaty as in this arbitration ordered

[222] BRG's Implementations of the Directions on Quantum, ¶ 37 (Footnotes omitted).
[223] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 40-42 (Footnotes omitted).

> Argentina to pay 6% interest, compounded annually, until the date of payment;
>
> - For over ten years, Argentina has refused to pay Webuild the above referenced ICSID award, even after an ICSID annulment committee confirmed the award in 2014. Webuild had to start enforcement proceedings in U.S. courts due to Argentina's failure to pay;
>
> - Argentina has also failed to pay other investment arbitral awards, forcing the award- creditors to initiate enforcement procedures in U.S. courts." [224]

162. The Claimant adds that:

> "The Tribunal should award pre- and post-award interest compounded annually to fully compensate Webuild for the damages Argentina has caused it, including the loss of the use of its money, and to avoid Argentina unjustly enriching at Webuild's cost. As Webuild argued at the Hearing on the Merits, 'an appropriate interest rate would be a rate like that in the Settlement Agreement that Argentina reached with Repsol in connection with the nationalization of YPF,' which as noted above was 8.75%. In any event, Webuild submits that the pre- and post-award interest rate should be no lower than 6%, which is the minimum rate that commercial courts grant in Argentina and which, as noted, a previous ICSID Tribunal also awarded in favor of Webuild in a separate arbitration against Argentina."[225]
>
> "Webuild also requests that the Tribunal expressly include the resulting amount(s) of interest in its damage award, including both (1) interest on historical losses (i.e., interest from September 2006 until the Date of Valuation of August 2014[)] and (2) pre-award interest (i.e., interest from August 2014 until the date of the award). To do this, the Tribunal can use the model provided by the quantum experts, which includes a feature for the Tribunal to calculate the interest amount on historical losses as well as a variety of pre-selected options for calculating the pre-award interest rate. Additionally, the Tribunal can use a spreadsheet provided by BRG that gives the Tribunal the freedom to choose its own interest rate for pre-award interest other than those already pre-selected by the parties' quantum experts." [226]

[224] Claimant's Post-Decision on Liability Response, II(E), pp. 9-10 (Footnotes omitted).
[225] Claimant's Post-Decision on Liability Response, II(E), p. 10 (Footnotes omitted).
[226] Claimant's Post-Decision on Liability Response, II(E), p. 10 (Footnotes omitted).

163. BRG explains that, as of June 2023, the damages amount to USD 239.4 million, based on an interest rate for pre-award interest of 8.75% commensurate with the Repsol-Argentina settlement agreement.[227] More precisely, they state that:

> "We were instructed by Counsel to update our estimate of damages to Claimant from the Valuation Date of August 2014 to the Date of Award. We use the date of this report, June 9, 2023 as a proxy for the date of the final award.
>
> In its pleadings, Claimant proposed pre-award interest at Repsol's settlement rate of 8.75% and Argentina's lowest rate granted in commercial courts of 6%.
>
> We understand that in this matter, the purpose of updating damages is to fulfill the principle of full reparation, that is, to place the Claimant in the position it would be in but-for the breaches. In relation to interest, this means finding a rate of interest or update that compensates for the economic loss associated with being deprived of the value of its business during the period elapsed from the date of valuation. From an economic standpoint, this is best achieved by a rate of update that considers the specific business in which the investment was made, as well as the location of the investment, as well as taking into account the creditworthiness of the debtor.
>
> The economic rate that achieves the above is also understood as the price of money, or the opportunity cost of funds. We explain them briefly below."[228]
>
> "The opportunity cost is an economic concept that refers to the value of the best alternative foregone [sic]. In this case, as a consequence of Argentina's actions, Claimant did not have access to the cash flows from the Valuation Date of August 2014 to the Date of the Award. The opportunity cost would therefore reflect the profits (or cost savings) that Claimant would have obtained had it had access to these funds as of August 2014.
>
> The opportunity cost refers to a measure of the price or cost of a comparable alternative in contrast to a specific identifiable spillover or downstream effect. This is an important distinction, as it distinguishes the pricing of the funds stranded in Argentina from other types of claims (not made in this case) related to specific forgone opportunities in identifiable projects or investments.
>
> The losses as of the Valuation Date represent the forgone funds. As noted above, the risk profile of the investment, its location, and the

[227] BRG's Implementations of the Directions on Quantum, ¶ 5 (Footnotes and Table 1 omitted).
[228] BRG's Implementations of the Directions on Quantum, ¶¶ 93-96 (Footnotes omitted).

creditworthiness of the debtor are all relevant variables in determining the appropriate risk profile or 'price' associated with these funds. The higher the risk the funds are exposed to, the higher the return (or interest rate) the Claimant would need to receive to be made whole. In this case, the Republic of Argentina acts as debtor of the award. Once an award is issued, it implies that the debtor has deprived the creditor of the value of the award until payment is made and therefore, until then, the creditor (i.e., Claimant) is still exposed to the risk of non-payment, delay or default of this obligation.

Taking these concepts into account we analyze different alternative rates and consider their appropriateness. We also explain why MS's proposal of using U.S. Treasury rates does not satisfy the principle of full reparation."[229]

"The opportunity cost of Claimants' lost cash flows can be measured through a range of alternatives; it ultimately represents the price or interest rate at which an investor would voluntarily provide capital to this business to be held from the date of valuation until payment.

a. One possible indicator is the real rate of return of 12.9% initially agreed to in the Concession contract, which is equivalent to 15.4% in nominal terms. This is the rate at which Claimant voluntarily agreed to enter into the contract for the Rosario-Victoria bridge in Argentina.

b. Alternatively, in 2006, in the context of the renegotiation, when the funds had already been invested, it agreed to a reduction of this rate to 8.87% in real terms, around 12.4% in nominal terms when assuming U.S. inflation of 3.2% (applicable in 2006)."[230]

"Both of these rates represent the rate of return Claimant was at different times willing to receive in order to commit capital to its investment in PdL. Alternatively, we can look at the market rate of debt for Puentes del Litoral, of 6.76%. This is the rate at which Claimant would have voluntarily contributed debt to PdL, after the renegotiation. These are all project-specific observed rates and thus, capture the important elements described above in relation to satisfying the goal of placing the Claimant back in the position it would be in but-for the breaches."[231]

"From the point of view of the debtor, the passage of time has benefited the debtor by avoiding facing an obligation (and Claimant continues to be exposed to the creditworthiness of Argentina until payment is made effective). We understand in fact from Counsel for

[229] BRG's Implementations of the Directions on Quantum, ¶¶ 97-100 (Footnotes omitted).
[230] BRG's Implementations of the Directions on Quantum, ¶ 101 (Footnotes omitted).
[231] BRG's Implementations of the Directions on Quantum, ¶ 102 (Footnotes omitted).

Claimant that Argentina has denied payment to Claimant in a separate arbitration awarded in 2011 under the same Treaty. In this case the Tribunal decided compensation would be compounded annually at an interest rate of 6%. This has also been the case in Teinver v. Argentina, which Argentina has denied payment since May 2019."[232]

"Additionally, we understand from Counsel for Claimant that Argentina's CIADI/UNCITRAL award payments between 2012 and 2019 included a 25% haircut. Argentina issued USD-denominated bonds to cover these payments with interest rates between 7% and 8.75%. This data confirms that an award does not make the award risk-less both from a pre or post-award standpoint."[233] [sic]

"One measure of the risks inherent to the payment of the award is given by the market's perception of the yield of Argentina's sovereign debt. These risks are usually measured by Argentina's sovereign debt rate, calculated as the risk-free rate plus the emerging Bond Index (EMBI), which ranged between 6% to 25% in the 2014-2023 period."[234]

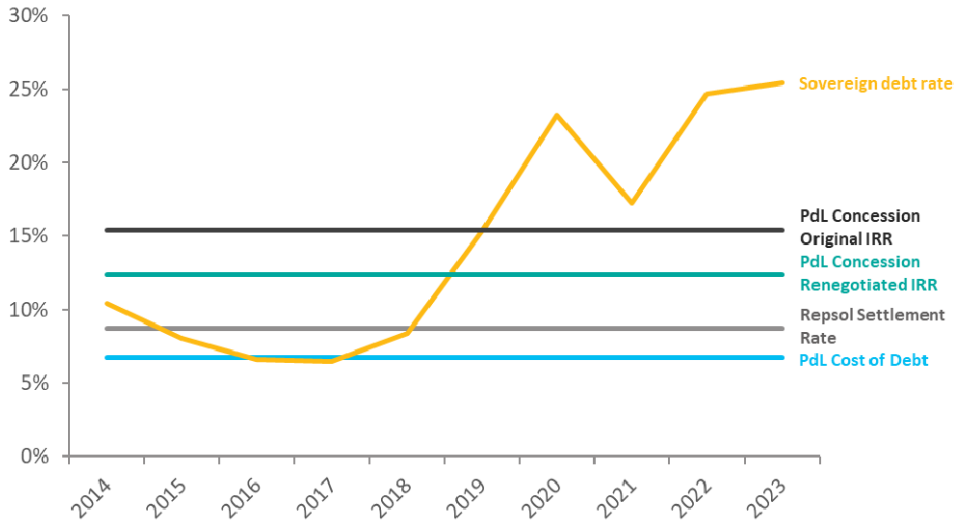
"Furthermore, any interest rate that is lower than the rate at which Argentina has access in the international markets would provide incentives for Argentina to delay payment. This would essentially allow Argentina to roll over its debt with Claimant on and on at rates lower than the ones it obtains in the market."[235]

"In its pleadings, Counsel for Claimant suggested a rate of 8.75% in line with the Repsol-Argentina settlement agreement in 2014. While this rate does not fully reflect the Argentine EMBI, it does reflect the deemed riskiness of the award payment."[236]

[232] BRG's Implementations of the Directions on Quantum, ¶ 103 (Footnotes omitted).
[233] BRG's Implementations of the Directions on Quantum, ¶ 104 (Footnotes omitted).
[234] BRG's Implementations of the Directions on Quantum, ¶ 105 (Footnotes omitted).
[235] BRG's Implementations of the Directions on Quantum, ¶ 106 (Footnotes omitted).
[236] BRG's Implementations of the Directions on Quantum, ¶ 107 (Footnotes omitted).

"A risk-free rate would not compensate Claimant for either the opportunity cost or for the risk of having the funds stranded in Argentina. Furthermore, only the U.S. Treasury can borrow funds at such low rates, because of its creditworthiness, as well as for the fact that it can issue hard currency (i.e., US Dollars) to satisfy its debts. No entity would voluntarily lend funds to Argentina at the same rate offered by the United States Treasury. Figure 13 below compares the rates mentioned above."[237]

**Figure 13: Pre-award interest rates (USD Nominal)**




Source: Joint Updated Valuation Model (BD-139/MS-31)

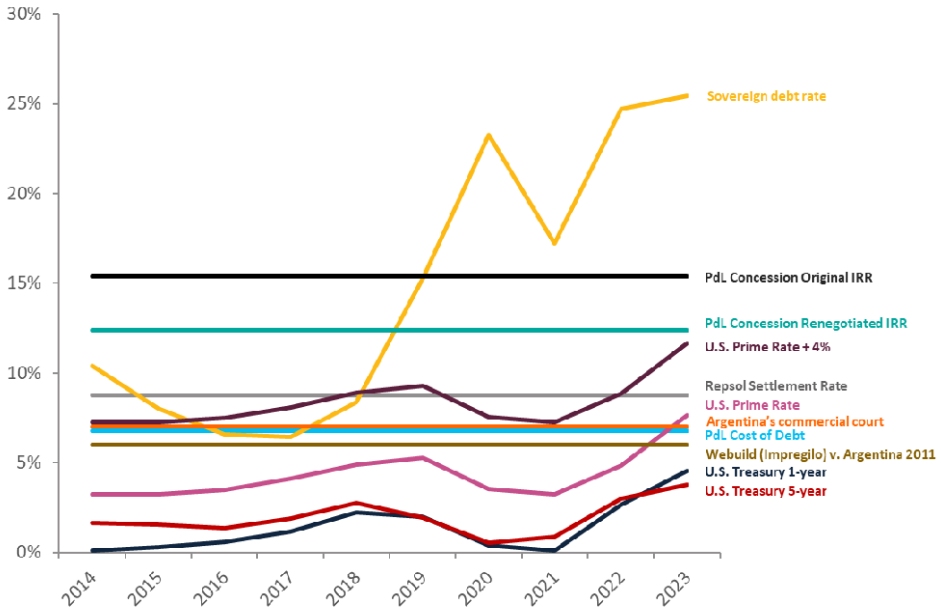
"In the event the Tribunal were to consider the often-cited concept of 'commercial rates' of update, we provide the following information. The concept of a commercial rate is quite wide, as the 'commercial' reality of one or another government or private entity can be very different. In general, however, we consider that at a minimum the notion of commercial rate is represented by the U.S. Prime rate which as we explain in section III.6 reflects the rate at which the most creditworthy U.S. corporations (i.e., rated as 'triple A') obtain debt capital. As we noted above however, Claimant does not have access to financing at this rate, nor does it reflect the risks borne by Claimant for the funds stranded in Argentina. For illustrative purposes, we show

[237] BRG's Implementations of the Directions on Quantum, ¶ 108 (Footnotes omitted).

the evolution of U.S. Prime plus a premium of 4% in Figure 14 below."[238]

"In its pleadings, Counsel for Claimant points out that the Argentina's commercial courts have historically granted an average rate of 7%,

**Figure 14: Pre-award interest rates including U.S. Treasury rates**




Source: Joint Updated Valuation Model (BD-139/MS-31)

including a minimum observed rate of 6%."[239]

"In contrast MS suggest the use of the 1-year and 5-year U.S. Treasury rates. As explained above, only the U.S. Government has access to obtaining funds at these rates. Therefore, MS's application of the 1-year and 5-year U.S. Treasury rates is not relevant for the determination of pre-award interest. Figure 14 below adds these rates to Figure 13 above for comparison purposes."[240]

164. The Respondent's experts note that:

"Claimant requests an award of pre-award and post-award interest capitalized on an annual basis from 31 August 2014 until the date Argentina pays in full. BRG proposes various annual interest rates ranging between 3.3 % and 12.4 %. It should be noted that the Tribunal has made no final decision on the quantum of damages and interest to be awarded at this stage, with such decision being deferred to the final

[238] BRG's Implementations of the Directions on Quantum, ¶ 109 (Footnotes omitted).
[239] BRG's Implementations of the Directions on Quantum, ¶ 110 (Footnotes omitted).
[240] BRG's Implementations of the Directions on Quantum, ¶ 111 (Footnotes omitted).

Award following further submissions of the parties on the questions and deliberations of the Tribunal."[241]

"The compensation amount to be determined by the Tribunal will be an amount certain and risk-free as of the valuation date. The risks that Claimant faced are taken into account upon determination of the compensation amount. Once the compensation amount has been determined, it only remains to preserve the value of money over time through interest until payment of the Award is made."[242]

"Given that the Tribunal upheld Argentina's position that the risk profile of historical losses is different from future losses and that a risk-free rate for such losses is more appropriate than a risk-adjusted rate, in line with such opinion, it would be reasonable to conclude that the rate to update the compensation amount until payment of the Award is made should be a risk-free rate."[243]

"The compensation amount to be determined by the Tribunal will be an amount certain and risk-free. Therefore, Claimant should only be entitled to interest compensating it for the time value of money until payment of the Award is made, but it should not be entitled to interest compensating it for the risks it did not bear."[244]

"Since the compensation amount will be an amount certain as of the valuation date, the appropriate interest rate would be a short-term risk-free rate, such as the yield rate on 1-year US Treasury bonds, for the only purpose of preserving the value of money over time. Any risk-adjusted rate would result in a disproportionate amount of interest."[245]

"BRG proposes a 'menu' of alternative rates for the calculation of interest up to the date of the Award: (i) US Prime Rate; (ii) US Prime Rate + 4 %; (iii) PdL's average cost of debt estimated by BRG between 2006 and 2014, which is 6.76 %; (iv) 12.4 %, based on the nominal IRR implied in the 2006 LOU (equivalent to a real rate of 8.873 % in pesos as of September 1997); (v) 6 %, which is the rate used in the award rendered in 2011 in the Impregilo v. Argentina case; (vi) 7 %, which is allegedly in line with the average rates used by Argentina in commercial cases; and (vii) 8.75%, in line with one of the three bonds used for the payment of compensation under an out-of-court settlement reached in the Repsol v. Argentina case. We understand that the last three rates have been included by BRG following instructions given by Claimant's attorneys."[246]

[241] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 102-103 (Footnotes omitted).
[242] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 104 (Footnotes omitted).
[243] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 105 (Footnotes omitted).
[244] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 106 (Footnotes omitted).
[245] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 107 (Footnotes omitted).
[246] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 109 (Footnotes omitted).

"Once again, we would like to highlight our disagreement with the use of any risk- adjusted rate as an adjustment rate to update damages. Once the Tribunal determines a compensation amount as of the valuation date, the amount so determined will not be subject to risk, thus there are no economic grounds to calculate interest on such amount at a risk-adjusted rate as from the valuation date. As already explained, the risks that Claimant faced are taken into account upon determination of the compensation amount. Therefore, once the compensation amount has been determined, it only remains to preserve the value of money over time through interest."[247]

(i) BRG: US Prime Rate

"The first rate proposed by BRG for interest calculation is the annual average of the US Prime Rate, which ranges between 3.3 % and 7.6 %. This is the same rate used by BRG to update historical damages up to the valuation date. As already explained, we do not deem the US Prime Rate to be a risk-free commercial rate, thus it is not the appropriate rate to calculate pre-award interest; a rate to preserve the value of money over time should be used instead. If the damage amount is updated at the US Prime Rate, the interest amount is USD 47.2 million as of 2 June 2023, which accounts for 41.1 % of the claim amount as calculated by BRG as of August 2014."[248]

(ii) BRG: US Prime Rate + 4 %

"The US Prime Rate + 4 % that is also proposed by BRG as an alternative rate for interest calculation is an arbitrary rate that includes a premium over the US Prime Rate for no reason. According to BRG's calculation, this rate ranges between 7.3 % and 11.6 % and, for some years, it is even higher than the WACC estimated by BRG as of August 2014 (8.91 %). Since the Tribunal has held that the WACC is not an appropriate rate to update historical losses, a risk-adjusted rate that is even higher than the WACC for some years would not be appropriate either, taking into account that the compensation amount to be determined by the Tribunal will be an amount certain and risk-free as of the valuation date. Therefore, there is no economic reason to calculate interest on the compensation amount at a risk-adjusted rate. If the damage amount is updated at the US Prime Rate + 4 %, the interest amount as of 2 June 2023 is disproportionate (USD 108.5 million), since it is almost equal to the claim amount itself as calculated by BRG as of August 2014."[249]

(iii) BRG: PdL's average debt ratio as calculated by BRG (6.76 %)

[247] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 110.
[248] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 111 (Footnotes omitted).
[249] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 112 (Footnotes omitted).

"PdL's average debt ratio between 2006 and 2014 as estimated by BRG (6.76 %) was obtained by adding the industry premium (2.0 %) and the country risk premium to the risk-free rate:

Kd = Rf + 2.0 % industry premium + country risk premium

Conceptually, the cost of debt reflects the financial cost incurred by a company for acquiring debt, which in turn depends on the risk involved in the relevant activity; the company's financial position and liquidity; and the prevailing market conditions, among other factors. In addition, this rate includes a country risk premium. Again, the compensation amount to be determined by the Tribunal will be an amount certain as of the valuation date, which will not be subject to PdL's credit risk or to country risk. Therefore, there is no economic reason to calculate interest at a risk- adjusted rate. Using PdL's cost of debt is inconsistent with basic economic principles.

For example, we have been informed that, in the award rendered in the Siemens v. Argentina case, the tribunal held that the interest rate to be taken into account is not the rate associated with corporate borrowing but the interest the amount of compensation would have earned had it been paid as of the valuation date. The tribunal held that the average interest rate applicable to US six-month certificates of deposit was an appropriate interest rate.

Updating the damage amount at PdL's debt ratio results in a disproportionate amount of interest as of 2 June 2023 (USD 68.8 million), which accounts for 60 % of the claim amount as calculated by BRG as of August 2014."[250]

(iv) BRG: 12.4 % IRR

"The fourth rate proposed by BRG is a 12.4 % rate based on the nominal IRR implied in the 2006 LOU (equivalent to a real rate of 8.873 % in pesos as of September 1997)."[251]

"First, the Tribunal should bear in mind that the IRR is a measure used in the evaluation of investment projects to verify the feasibility of an investment. It allows for a comparison of investments, since it is a relative profitability measure defined as the discount rate that makes the net present value (NPV) equal to zero for a given investment project. Therefore, the IRR is not an interest rate and may not be used to calculate interest for various reasons:

a. Using the IRR to calculate interest would mean assuming that there are alternative projects providing that rate of return in

[250] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶¶ 113-116 (Footnotes omitted).
[251] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 117.

which Claimant could have invested, whereas, in reality, there may be a wide range of limitations to Claimant's ability to succeed and manage such alternative projects. In addition, a claimant investing in risky projects, some of which may fail, would receive greater profits than a claimant investing in less risky projects, which offer a lower rate of return. Ultimately, the argument that the breach deprived Claimant of the possibility of making alternative investments that would have provided yields similar to the (high) yield expected by Claimant from other activities and that, therefore, Argentina should pay compensation for such lost investment returns is incorrect. The yield obtained by Claimant from alternative investments has nothing to do with Argentina. In addition, Claimant never made such alternative investments or faced the associated risks. The alternative investments could have gone well or bad, and Claimant could have earned or lost money. Calculating interest at the IRR implied in the 2006 LOU would mean compensating Claimant for the favourable result of a hypothetical alternative investment and ignoring the possibility of it not being favourable.

b. If the alternative project had been so fantastic, Claimant should have been able to find financing sources other than the compensation amount. Therefore, using the 12.4 % IRR as an interest rate to calculate interest would not be appropriate."[252]

"Second, the Tribunal should bear in mind that no IRR was guaranteed to the successful consortium under the Contract; the Concession for the Rosario-Victoria connection was at the Concessionaire's risk, and the State did not guarantee its profitability or minimum traffic. In addition, the offer presented by the successful consortium in which Webuild (then named Impregilo S.p.A.) participated did not even mention an IRR required for the project. The IRR may not be used to calculate interest since, if it were, Claimant would obtain an equivalent yield that was explicitly not guaranteed within this regulatory framework. For instance, the project profitability could be lower if actual traffic volume was lower than the one existing at the time the offer was made and, for the purposes of calculating interest, it would not be appropriate for the Tribunal to compensate Claimant on the basis of a rate of return that had not been guaranteed."[253]

"Third, in addition to the fact that the IRR cannot be used to calculate interest, as explained above, the Tribunal should ensure that the interest rate corresponds with the compensation currency. Interest rates reflect inflation and exchange rate fluctuations that apply specifically to a given currency. Therefore, the interest rate should be based on the market rates for the currency in which compensation is granted, since applying rates in a given currency to amounts

[252] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 118 (Footnotes omitted).
[253] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 119 (Footnotes omitted).

denominated in another currency would be completely inappropriate."[254]

"As explained in our First Report, under the 2006 LOU, the IRR was pesified into constant pesos as of September 1997, among other provisions. Since in 1997 Argentina had a currency board system (a 1 to 1 parity between the Argentine peso and the US dollar), BRG simply assumes that the IRR for 1997 is equal to a real dollar rate for 2014. This assumption is incorrect, since interest is not calculated for the period in which the currency board system was in force—which ended in January 2002 upon the enactment of the Emergency Law, several years before the claim period—but-for the period beginning in August 2014, when the Argentine peso-US dollar parity was undeniably no longer in force."[255]

"BRG is making a serious mistake by claiming that an amount denominated in US dollars should be updated at a rate denominated in Argentine pesos, against the basic financial principle of consistency between the cash flow currency and the currency in which discount or adjustment rate is calculated. Determining a compensation amount in US dollars and then applying a rate in pesos to calculate interest, such as the IRR proposed by BRG, would be inappropriate because Claimant would be overcompensated. This is evidenced by the calculation of interest at the 12.4% IRR, which results in a disproportionate amount of interest as of 2 June 2023 (USD 197.3 million), which accounts for 171.9 % of the amount claimed as calculated by BRG as of August 2014. This completely distorts the concept of fair compensation, since it results in a totally disproportionate potential compensation."[256]

"On the basis of a discussion held with BRG, we understand that the following three rates for the calculation of interest were introduced following instructions given by Claimant's attorneys: the 6 % rate used in the award rendered in 2011 in the *Impregilo v. Argentina* case; the 7 % rate which, according to Claimant, is in line with the average rates used by Argentina in commercial cases; and the 8.75 % rate, which was the rate of one of the three bonds in the compensation package granted to Repsol."[257]

(v) BRG (following instructions given by Claimant's attorneys): 6 %

"It should be noted that, in the award rendered in 2011 in the *Impregilo v. Argentina* case, the tribunal held that the 15 % rate that had been requested by Impregilo to calculate interest was excessively high and it thus reduced it to 6 %, applicable as from July 2006. However, the

[254] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 120.
[255] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 121 (Footnotes omitted).
[256] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 122.
[257] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 123.

tribunal did not explain the reasons for the interest awarded. In any case, even a 6 % rate is a risk-adjusted rate, as opposed to risk- free rates as of the August 2014 valuation date. For example, we have been informed that, in the award rendered in 2021 in the *Casinos Austria v. Argentina* case, the tribunal considered that the 6 % rate in US dollars proposed by claimant to calculate interest as from August 2013 was too high taking into account the low inflation rate in the United States, and stressed that the cited awards in ICSID cases under which a 6 % rate in US dollars was awarded had been rendered at a time when interest rates in US dollars were substantially higher than during the years to follow. Therefore, the tribunal decided to apply an annual interest rate of 4 % in US dollars as from August 2013."[258]

"In any case, there is no reason to use a fixed interest rate. There is no basis to assume that any fixed rate would compensate a claimant for the time value of money, since interest rates fluctuate over time. In fact, fixing an interest rate that is similar to the risk-free rate at a given time as a basis to calculate interest over a period when rates fluctuate is inappropriate. As already explained, the compensation amount to be determined by the Tribunal will be an amount certain and risk-free as of the valuation date, thus interest should only be used to preserve the value of money over time. This may be achieved by using a variable risk-free interest rate that fluctuates over time, such as the yield on 1-year US Treasury bonds."[259]

"The unjustified use of a fixed rate of 6 % as proposed by Claimant results in an interest amount of USD 76.4 million as of 2 June 2023, which accounts for 67 % of the claim amount as calculated by BRG as of August 2014."[260]

(vi) BRG (following instructions given by Claimant's attorneys): 7 %

"As regards the average rate of 7 %, we do not know which are the commercial cases in which, according to Claimant, Argentina paid interest at a rate of 7 %, and are unaware of the context of such cases and the parties involved. First, as informed by the PTN, Argentine courts apply simple interest, as opposed to capitalized interest. Second, there are plenty of commercial cases tried by Argentine courts in which rates much lower than 7 % have been applied. In any case, a rate of 7 % is a risk- adjusted rate and is inappropriate because it is a fixed rate, as already explained. If we use this rate of 7 %, the interest amount is USD 92.8 million as of 2 June 2023, which accounts for 80.8 % of the claim amount as calculated by BRG as of August 2014."[261]

[258] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 124 (Footnotes omitted).
[259] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 125 (Footnotes omitted).
[260] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 126.
[261] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 127.

(vii) BRG (following instructions given by Claimant's attorneys): 8.75 %

"The rate of 8.75 % proposed by Claimant was the coupon rate of one of the bonds in the compensation package granted to Repsol under an agreement that provided for payment by means of Argentine sovereign bonds. The compensation package was made up of a portfolio of Argentine bonds including Bonar X (with a coupon rate of 7 %), Discount 33 (with a coupon rate of 8.28 %), and Bonar 2024 (with a coupon rate of 8.75 %). First of all, Claimant has been selective in choosing the coupon rate of the Argentine bonds used to pay Repsol, since it opted for the highest rate (8.75 %)."[262]

"In addition, the agreement between Repsol and Argentina was an out-of-court agreement, which is completely unrelated to the case at hand. For example, we have been informed that, in the award rendered in the *Teinver v. Argentina* case, the tribunal held that claimants had not proved that a connection existed between 'the 8.75 % rate that Argentina used in its (...) settlement with Repsol', which they had proposed as the applicable interest rate, and the damage sustained due to the delay in payment of the sums awarded. Indeed, respondent's cost of debt is unrelated to claimant's actual losses. After disregarding the rate proposed by claimants, the tribunal in the *Teinver v. Argentina* case finally held that the appropriate interest rate was the US six-month Treasury Bill rate."[263]

"In addition, by claiming that an interest rate equivalent to the rate of an Argentine bond should be used, Claimant is implying that its situation is similar to the situation of creditors holding Argentine bonds, which is incorrect. Claimant has not taken the same risk as investors in Argentine bonds. Investors in bonds face various types of risks, including but not limited to the following:

a. Interest-Rate or Market Risk. This is the probability of a decline in the value of a bond due to fluctuations in market interest rates, since bond prices and interest rates have an inverse relationship. If an investor has to sell a bond prior to the maturity date, an increase in interest rates will mean selling the bond below the purchase price, thus the realization of a loss.

b. Reinvestment Risk. The calculation of the IRR of a bond assumes that all interim cash flows received before the maturity date are reinvested at the same IRR.

   However, the reinvestment depends on the prevailing interest-rate levels at each time. Therefore, reinvestment risk is the risk

[262] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 128 (Footnotes omitted).
[263] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 129 (Footnotes omitted).

that the interest rate at which future cash flows can be reinvested will fall, thereby reducing the effective rate received by the investor.

c. Call Risk. Many bonds include a provision that allows the issuer to call all or part of the issue before the maturity date. From the investor's perspective, there are three disadvantages to call provisions: (i) the cash flow pattern of a callable bond is not known with certainty; (ii) because the issuer will call the bonds when interest rates have dropped, the investor is exposed to reinvestment risk; and (iii) the capital appreciation potential will be reduced, because the price of the bond will not rise much above the strike price.

d. Default or Credit Risk. This is the probability that the issuer will default (i.e., be unable to make timely principal and interest payments on the issue) which, in the case of sovereign governments, depends on tax and price stability, the availability of reserves, etc.

e. Inflation Risk. This risk arises because of the variation in the purchasing power of future cash flows (capital and coupons of a security) due to inflation, especially in the case of fixed coupon rates.

f. Liquidity Risk. The liquidity of any financial instrument is measured as the ease with which it can be sold at or near its value, which is closely related to the size of an issue or a market. The smaller the market or the smaller the amount issued, the harder will be to find a buyer. This problem may have a significant impact on the ask price of such security if potential buyers offer a price well below the ask price. The primary measure of liquidity risk is the size of the spread between the bid price and the ask price. The wider the bid-ask spread, the higher the liquidity risk.

g. Volatility Risk. The risk that a change in the expected volatility of interest rates will adversely affect the price of a bond is called volatility risk.

h. Risk Risk. Since there have been new and innovative structures introduced into the bond market, the risk/return characteristics are not always understood by investors. Risk risk is defined as not knowing what the risk of a security is."[264]

"As shown above, investors in bonds face various types of risks, but Claimant has taken no risk regarding the amount claimed. Therefore, assuming that the relevant interest rate to be used in calculating

[264] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 130.

> compensation is the rate of one of the Argentine sovereign bonds is incorrect. In contrast, in this case, the compensation amount as of the valuation date will be an amount certain and will thus not be subject to any risk."[265]
>
> "The calculation of interest at an 8.75 % rate as proposed by Claimant results in a disproportionate amount of interest as of 2 June 2023 (USD 124.5 million), which accounts for 108.5 % of the claim amount as calculated by BRG as of August 2014."[266]

165. The Tribunal is sympathetic to submissions of the Respondent that a risk-free rate is appropriate for pre-award interest after the date of valuation and post-award interest, although it appreciates that an award may not be entirely risk-free. Interest will compensate the Claimant for the time value of its money and will continue to accrue until the date of payment of the Award. Full reparation does not depend on giving a party its preferred rate of interest. Moreover, it is not persuasive to the Tribunal that other tribunals in individual cases have awarded a particular rate of interest. Nor does a figure based on IRR make any sense to the Tribunal. By the same token, however, the Tribunal has previously decided that neither the U.S. Prime rate nor the rate on U.S. Treasury bills is apposite.

166. The Tribunal is persuaded that the rates granted by the courts of Argentina are useful benchmarks. It also notes that these rates—which the Claimant has submitted are a minimum of 6% and average 7%—are consistent with PdL's estimated average debt ratio as calculated by BRG. As the Tribunal understands it, this calculation is based on a risk-free rate to which an industry and country risk premium are applied. The logic underlying this calculation thus appears to be objective, consistent with the Respondent's submission that a risk-free rate should be chosen, and adjusted for the country and industry. While the Respondent considers that this rate would result in a disproportionate amount of interest in relation to the value of the claim, the Tribunal considers that the minimum interest rate of 6% awarded by the Argentine courts, which also coincides with the rate awarded to Impregilo in its earlier case against Argentina,

[265] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 131.
[266] Post-Decision on Liability Valuation Report by Machinea & Schargrodsky, ¶ 132.

is appropriate as the interest rate applicable to the post-award period from the date of this Award to the date of payment, and so decides.

167. The Tribunal recognizes that interest rates currently are higher than they have been historically during the relevant period. For the pre-award period between the valuation date and the date of this Award, the Tribunal accepts, consistent with Argentina's submission that a single rate may not be appropriate, that a lower rate is suitable. The only lower rate put forward by the Respondent is the U.S. Treasury rate; given the Tribunal's concerns about how apposite that rate is for these circumstances, the Tribunal has determined that the rate for this period should be 4%, reducing the risk premiums included in BRG's estimate commensurately. Annual compounding should continue to apply.

## IV. SUMMARY OF TRIBUNAL DECISIONS AND CALCULATIONS

168. At the outset, the Tribunal reaffirms its earlier decision that the breach of the FET standard became irrevocable on 31 August 2014 and that that date, rather than September 2006 or 2002, is therefore the appropriate valuation date for purposes of calculation of damages.

169. In terms of the answers to the Tribunal's questions from the Parties (or a Party, as indicated):

(a) *Current Legal Status of Puentes* – As set forth in paragraphs 56 to 61 above, the Parties would seem to be in agreement that PdL's dissolution has not yet been completed, liquidation proceedings are ongoing and the distribution of the liquidation remainders to the shareholders has not yet taken place. As for Puentes' lawsuit to rescind the termination of the Concession Contract, the court of first instance has issued a decision denying the claim. The Tribunal will consider in subparagraph (d) below the implications of these domestic proceedings on its Award, particularly in relation to any potential for double recovery.

(b) *Subcontractor and Other Repayments* – As discussed in paragraphs 62 to 68 above, the assumptions made by the Claimant's experts regarding the timing of

restructuring of subcontractor debt and repayment of such debt in the wake of the 2006 MOU are unduly optimistic. The Tribunal has therefore deemed it appropriate to reflect in the contributory figure of 20% an element corresponding to its assessment that in the "but-for" scenario, such debt restructuring and repayment would have taken longer. However, with the increased cash flows from the restructuring, and the reduced burdens from the shareholder and FAL loans and their likely replacement with market rate debt, the Tribunal considers it reasonable to conclude that additional cash would have been freed up. Moreover, payment of subcontractors would have been a priority in the "but-for" scenario given the outstanding ICC award.

(c) *Effect of Reduction of Interest Rate on Shareholder Loans* – As set forth in paragraphs 69 to 72 above, the Tribunal considers that the Respondent's explanation provides additional support for the "but-for" scenario's assumption that the interest rate on shareholder debt would be reduced to a market rate rather than maintained at the 15% rate in that scenario. What that market rate should be is a completely distinct question from the question of what interest rate should apply to historical damages, as well as pre- and post-Award interest. The Tribunal considers a market rate assumption regarding the interest rate on this debt in the "but-for" scenario to be reasonable and appropriate.

(d) *Double Recovery Issues* – As explained in paragraphs 73 to 78 above, in the Tribunal's view, the risk that the Award might lead to double compensation in light of the pending domestic court proceedings is relatively remote, particularly in view of the Argentine court's recent dismissal of the PdL claim for wrongful termination of the Concession Contract (the local proceeding styled "Puentes del Litoral S.A. c/EN-M Planificación IP y S s/Proceso de Conocimiento," File No. 25047/2014, pending before Federal Contentious-Administrative Trial Court No. 8). Moreover, Webuild is not the plaintiff in that case, but was involuntarily joined as an interested party and the Tribunal accepts it would not be in a position to have the case dismissed even if it were to continue following the judgment. As to the reorganization proceedings (styled "Puentes del Litoral S.A. s/ concurso preventivo," File No. 20328/2007, pending before Commercial Trial Court No. 13,

Clerk's Office No. 26), there does not seem to be any imminent risk that Webuild will receive payments from those proceedings in relation to either its debt or equity interest. In the Tribunal's view, the issues of double recovery are best dealt with at the time of payment of the Award. Webuild has repeatedly manifested itself in these proceedings to be willing to provide undertakings that would prevent any double recovery, and has in fact provided them. For these reasons, the Tribunal declines to accede to the Respondent's requests in this context.

170. In its Decision on Liability, the Tribunal instructed the Parties (or a Party, as indicated) to prepare revised calculations of damages consistent with that Decision on the basis of a set number of instructions. As the Parties partially failed to do so, the Tribunal has taken a decision on these matters on the basis of the reasons set forth in more detail earlier in this Award and summarized and cross-referenced below, resulting in an updated valuation model.

(a) *Toll Rates* – As set forth in paragraphs 102 to 106 above, the Tribunal has accepted the revised calculation, which has been agreed by the Parties, meaning that the initial toll rates in the Joint Updated Valuation Model correspond to those set forth in the 2006 LOU, and the readjustment of rates after the initial period set by the 2006 LOU has been made on an annual basis consistently with the indices and the 5% threshold specified in that LOU.

(b) *Toll Subsidy* – As previously discussed in paragraphs 107 to 110 above, the Tribunal has determined that it would be inappropriate to apply the subsidy after the evidence appears to indicate it was terminated (in 2012). Since this subsidy was granted by Argentina to toll operators for a period of time, the Tribunal considers it appropriate to include it for the period of time during which it was in force.

(c) *Elasticities* – As set forth in paragraphs 111 to 117 above, the Tribunal has found that there is agreement between the Parties regarding the existence of a differential between light and heavy traffic, but disagreement as to whether to use the lower end of the Bates study (the Respondent) or the midpoint (the Claimant). In doing so, the Tribunal considered that the Claimant has not met

its burden of persuasion on this issue and decided to adopt the lower end of the Bates study as argued by the Respondent.

(d) *Rate of return* – As set forth in paragraphs 118 to 122 above, the Tribunal has accepted the Claimant's revised calculation as consistent with its instructions. It considers the use of *ex post* data helpful in this context to avoid speculation. While it is not disputed that the Contract was a risk contract, it was also calculated based on a presumed rate of return. The revised calculations show this rate would have declined from the original offer and even from the 2006 MOU in the "but-for" scenario.

(e) *Working capital* – As reviewed in paragraphs 123 to 127 above, the Tribunal understands as a result of the Parties' submissions that they have agreed on the calculation of the working capital variation in 2006, and has accepted this agreement.

(f) *Rate of interest on the FAL* – As set forth in paragraphs 128 to 133, above, the Tribunal has decided that no further change in the FAL rate is needed and that the prior calculation put forward by the Claimant shall stand.

(g) *Rate of Interest on Shareholder Loans and Additional Shareholder Loans* – In its Decision on Liability, the Tribunal confirmed that "[t]he assumed rate of interest on shareholder loans (including the Shareholder Loans) shall be unchanged from the earlier calculations performed by those experts. No additional shareholder loans shall be assumed to have been made in the 'but-for' scenario."[267]

(h) *Effect of Debt Overhang from Pre-Operation Phase* – As explained more in depth in paragraphs 134 to 141 above, the Tribunal considers it impossible to determine with absolute precision the effect of the debt overhang on PdL upon the partial restoration of the Concession's equilibrium in 2006. The problems of that era were not all of PdL's making, but likely were a result of both PdL's actions and the deteriorating Argentine economic picture in the years prior to

[267] Decision on Liability, ¶ 439(g).

the declaration of the emergency. Had PdL not had to take out shareholder loans or the FAL, its borrowing costs would have been lower. The Tribunal has not been convinced that PdL would be in a position to eliminate subcontractor and other debts as quickly as the Claimant's experts assume. Proceedings involving PdL in relation to a petition of bankruptcy did not appear to move forward until 2007. Thus, the apparent assumption of the Claimant that it would be fully paid in short order seems unrealistic. Capitalization of interest by the Claimant on its loans resulted in the principal of the loans increasing by more than 50%. The Respondent has calculated that the shareholder debt incurred as a result of the cancellation of the IDB Loan and the economic emergency represented between 13.6 and 16.1% of Webuild's claims. All of this has led the Tribunal to conclude that 20% is the appropriate share of the Claimant's responsibility.

(i) *Other* – In its Decision on Liability, the Tribunal confirmed that "[e]xcept as set forth herein, all other assumptions in the calculation of damages in the 'but-for' scenario shall remain unchanged."[268]

(j) *Interest Rate on Historical Losses* – In its Decision on Liability, the Tribunal confirmed that "[h]istorical losses are to be calculated using a risk-free standard commercial rate of interest on or around the Valuation Date. The Tribunal invited further submissions from the Parties as to what a non-risk-based normal commercial rate around the Valuation Date in 2014 would have been."[269] For the reasons set forth in paragraphs 142 to 147 above, the Tribunal has decided that historical losses should be calculated according to the 12-month LIBOR rate for the period 1 September 2006 to 31 August 2014.

(k) *Discount Rate for future losses* – In its Decision on Liability, the Tribunal confirmed that: "[t]he discount rate for future projected losses shall continue to be the WACC […]"[270]. For the reasons set forth in paragraphs 148 to 151 above, the Tribunal has been sufficiently persuaded by the Claimant's

[268] Decision on Liability, ¶ 439(i).
[269] Decision on Liability, ¶ 439(j).
[270] Decision on Liability, ¶ 439(k).

arguments that country risk premium and the *beta* for volatility have been appropriately treated in its computation. Accordingly, the discount rate to be used in the "but-for" scenario should be the WACC of 8.9%, rather than the alternative put forward by the Respondent.

(l) *Pre- and Post-Award Interest* – As set forth in paragraphs 160 to 167 above, the Tribunal has determined that the pre-Award interest rate should be 4%, and the post-Award interest rate should be 6%.

(m) *Compounding* – In its Decision on Liability, the Tribunal confirmed that "[i]nterest shall be compounded annually […]."[271] The Parties thus appear to agree on the calculation that results from the implementation of annual compounding of interest up to the valuation date.

171. The foregoing decisions result in the following damages summary (*in USD million*):

| | |
|---|---|
| **Firm Value of PdL** | **324.3** |
| Net Debt Value of PdL | 83.1 |
| **Equity Value of PdL** | **241.1** |
| Stake Impregilo S.p.A. in PdL | 26% |
| **Damages to Claimant's equity** | **62.7** |
| **Damages to Claimant's debt** | **34.7** |
| **Total Damages to Claimant (Aug. 2014)** | **97.4** |
| Interest | 49.6 |
| **Total Damages to Claimant (Date of Award)** | **147.0** |

Accordingly, the amount of damages due from the Respondent to the Claimant as of the date of this Award, inclusive of interest[272], shall be USD 147,031,036.74. Post-Award interest as noted in the preceding paragraph shall accrue at the rate of 6% per annum, compounded annually.

[271] Decision on Liability, ¶ 439(l).
[272] Note: Pre-Award interest was calculated up to 28 February 2025.

# V. COSTS

## A. CLAIMANT'S POSITION

172. The Claimant submits that (i) the full compensation standard, the ICSID Arbitration Rules, and the Respondent's conduct in the arbitration require that the Claimant be placed "in the same position in which it would have been had the Argentine Republic not breached its international obligations and conducted this arbitration in a more efficient manner, and that includes wiping away all of Webuild's costs and attorneys' fees incurred in this arbitration;"[273] (ii) Webuild's attorney fees are reasonable considering the complexity of the case, the Respondent's liability and its conduct during the proceeding; (iii) the Respondent's costs in this arbitration are lower because as explained in *GemPlus*, "state's billing practices with its legal representatives are different"[274]; and (iiv) the Respondent filed meritless requests in what can only be a legal strategy meant to further delay the conclusion of these proceedings,[275] and that as found in *Tethyan v. Pakistan*,[276] here too, the Respondent should bear the consequences of its legal strategy.[277]

173. In its updated Costs Submission of 31 May 2024, as further updated on 10 October 2024, the Claimant summarizes its costs as follows:

| SUMMARY OF CLAIMANT'S FEES AND EXPENSES | AMOUNT (IN USD) |
|---|---|
| **Legal Fees and Expenses** | |
| • King & Spalding | |
| *Legal Fees Jurisdiction Phase (as of December 31, 2017)* | $3,501,603.50 |
| *Legal Fees Merits Phase (as of October 10, 2024)* | $5,552,379.00 |
| *Legal Fees Request for Reconsideration* | $233,282.50 |
| *Expenses (*including, *inter alia*, travel, hearing expenses, translation services, copies, etc.*)* | |

[273] Claimant's Updated Costs Submission, 10 October 2024, p. 5.
[274] Claimant's Updated Costs Submission, 10 October 2024, ¶ 3, citing *GemPlus S.A. v. United Mexican States*, ICSID Cases Nos. ARB (AF)/04/3 & ARB(AF)/04/4), 16 June 2010, ¶¶ 17-25-17-26 (**AL RA-281**).
[275] Claimant's Updated Costs Submission, 10 October 2024, ¶ 1.
[276] *Tethyan Copper Company Pty Limited v. Islamic Republic Pakistan*, ICSID Case No. ARB/12/1, Award, 12 July 2019, ¶¶ 1854-1855 (**CLA-261**).
[277] Claimant's Updated Costs Submission, 10 October 2024, ¶ 2.

| | |
|---|---|
| *Jurisdiction Phase (as of December 31, 2017)* | $95,059.64 |
| *Merits Phase (as of October 10, 2024)* | $138,686.31 |
| • Marval, O' Farrell, Mairal (*Merits phase*) | $195,916.24 |
| **Experts' Fees and Expenses** | |
| • Compass Lexecon | |
| *Jurisdiction Phase (as of December 31, 2017)* | $198,472.75 |
| *Expenses Merits Phase* | $117,895.00 |
| • Berkeley Research Group (BRG) (*Merits phase*) | $701,143.03 |
| • Dr. Horacio Liendo (*Merits phase*) | $62,309.95 |
| **Claimant's Additional Expenses (including travel and hearing expenses)** | |
| • *Jurisdiction Phase* | $50,360.38 |
| • *Expenses Merits Phase* | $119,591.71 |
| **Claimant's share of Tribunal's and ICSID's Fees and Expenses** | |
| • *Advance on Costs* | $769,885.00 |
| • *Transfer fees* | $115.00 |
| TOTAL | **$11,736,700.01** |

174. The Tribunal notes that from the above-indicated legal fees, the Claimant incurred in USD 233,282.50 in connection with the Respondent's Application for Reconsideration.

175. The Tribunal further notes that, excluding advances to ICSID, the Claimant's legal fees and expenses amount to USD 10,966,700, which after deducting the legal fees related to the Respondent's Application for Reconsideration, amount to USD 10,733,417.51.

## B. RESPONDENT'S POSITION

176. In its submission on costs, as updated from a substantive point of view on 8 November 2024, the Respondent's contentions include, among others, that (i) the Claimant has failed to justify its unreasonably disproportionate costs in this arbitration proceeding; (ii) on jurisdiction, the Respondent justifiably raised the prescription exception on the basis of the Claimant's undue delay in initiating this arbitration proceeding (in

comparison with Hochtief, its partner in the same toll road concession), as well as the 18-month domestic litigation condition for arbitration, and the contractual nature of the dispute and the risk of conflicting findings in different fora; (iii) on the merits and quantum, the Respondent has litigated in good faith in the reasonable belief that its defenses would prevail; (iv) bringing a decision such as the 27 June 2024 judgment concerning the same Concession to the attention of the Tribunal was not frivolous; (v) when measuring the Claimant's fees against the Respondent's, the Tribunal, as have other tribunals, should consider the proportionality of the costs of the Parties as a relevant element to decide on their reasonableness and their allocation; and (vi) the Tribunal should reduce the costs stated by the Claimant and determine that each Party should bear its own costs, and that the costs of the arbitration, including the fees and expenses of the members of the Tribunal and its assistant, and ICSID's costs should be borne equally by the Parties.[278]

177. In its updated Statement of Costs of 25 October 2024, the Respondent summarizes its costs as follows:

| **ITEMS** | **Jurisdiction** (already submitted) USD | **Merits and Hearing** (already submitted) USD | **Post-Hearing Phase** (already submitted) USD | **Reconsideration** USD |
|---|---|---|---|---|
| Payments to ICSID | 200,000.00 | 500,000.00 | 70,000.00[279] | - |
| Personnel of the Treasury Attorney-General's Office | 112,878.77 | 142,383.15 | 84,171.44 | 5,480.71 |
| Experts | - | 49,339.78 | 15,923.01 | - |
| Airfares, hotel and per diem | 24,372.06 | 12,679.00 | - | - |
| Translations | 2,741.95 | 6,814.00 | 2,620.06 | - |
| Supplies and stationary | 542.86 | 429.00 | - | - |
| Courier | 1,689.51 | 2,276.36 | 801.58 | - |
| Databases and IT services | | | 6.959.52 | |
| | | | | |
| **SUBTOTALS USD** | 342,225.15 | 713,92.29 [sic] | 180,475.61 | 5,480.71 |
| **CUMULATIVE TOTAL USD** | | | | **1,242,102.76** |

[278] Respondent's Updated Costs Submission, 8 November 2024.

[279] The Tribunal recalls that the fourth and fifth advance payments requested by the Centre by letters of 14 September 2023 and 8 November 2024 were not paid by the Respondent, and that as a result the Claimant made the default payments of the Respondent's outstanding portions of USD 70,000.00 and USD 30,000.00, respectively.

178. The Tribunal notes that excluding advances to ICSID, the Respondent's legal fees and expenses amount to USD 472,102.76.

## C. THE TRIBUNAL'S DECISION ON COSTS

179. The Tribunal recalls that Article 61(2) of the ICSID Convention reads as follows:

> *In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.*

180. This provision gives the Tribunal discretion to allocate all costs of the arbitration, including attorney's fees and other costs, between the Parties as it deems appropriate.

181. Additionally, Rule 28 of the ICSID Arbitration Rules provides:

> "Rule 28
> Cost of Proceeding
>
> (1) Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:
>
> (a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the Tribunal and the charges for the use of the facilities of the Centre;
>
> (b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.
>
> (2) Promptly after the closure of the proceeding, each party shall submit to the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding and the Secretary-General shall submit to the Tribunal an account of all amounts paid by each party to the Centre and of all costs incurred by the Centre for the proceeding. The Tribunal may, before the award has been rendered, request the parties and the Secretary-General to provide additional information concerning the cost of the proceeding."

182. With respect to the fees and expenses (other than the costs of the arbitration), the Tribunal had previously determined, as set forth in the Decision on Reconsideration,

that Argentina should bear the Claimant's legal costs incurred in responding to the Request for Reconsideration, which amount to USD 233,282.50. As to the remaining legal fees and expenses (other than the costs of the arbitration), although the Claimant has prevailed on the merits of its FET claim, the Tribunal does not consider that it would be appropriate for the Respondent to bear 100% of the Claimant's legal fees and expenses. Although the significant disparity between the fees and expenses incurred by the Parties does not lead the Tribunal to conclude that the Claimant's claimed fees and expenses are necessarily unreasonable, the Tribunal after due deliberation has concluded that under the facts and circumstances of this case, for the Respondent to bear 100% of those fees and expenses would be disproportionate. It therefore considers that requiring the Respondent to bear 50% of those fees and expenses, that is, USD 5,366,708.75, is fair and reasonable. The Tribunal has also decided that the Respondent should bear its own fees and expenses.

183. The costs of the arbitration, including the fees and expenses of the Tribunal and the Tribunal's Assistant, ICSID's administrative fees and direct expenses, amount to (in USD):

| | |
|---|---|
| Arbitrators' fees and expenses | |
| James Crawford | 179,179.58 |
| Lucinda Low | 168,959.85 |
| Kaj Hobér | 194,925.00 |
| Jürgen Kurtz | 200,309.90 |
| Assistant's fees and expenses | 200,742.81 |
| ICSID's administrative fees | 388,000.00 |
| Direct expenses | 255,337.36 |
| **Total** | **1,587,454.50** |

184. The above costs have been paid out of the advances made by the Parties. In accordance with Regulations 15(1)(c) and 15(2) of ICSID Administrative and Financial Regulations, each party shall pay one half of the payments requested by the Centre to cover the costs of the proceeding referred to in Regulation 14. The Respondent, however, has not paid its 50% share pursuant to the fourth and fifth advance payment requests in the amount of USD 70,000.00 and USD 30,000.00, respectively. Upon request, the Claimant has therefore paid in addition to its own share, the Respondent's share of these two advances. The Claimant has made payments in the total amount of

USD 899,885.00, which accrued interest of USD 23,435.57; and the Respondent in turn has made payments amounting to USD 700,000.00, which accrued interest of USD 18,229.99. The Tribunal considers that a 50/50 sharing of the costs of the arbitration is a fair and appropriate allocation in this case. A 50% share of the total costs of arbitration amounts to USD 793,727.25. The Respondent should therefore refund to the Claimant the amount of USD 75,497.26, which corresponds to the expended portion of the Claimant's advances to ICSID in excess of 50% and reflects the amount necessary to equalize the Parties' share of the costs of the arbitration.

185. Accordingly, the Tribunal decides that the Respondent should pay to the Claimant in respect of costs the sum of USD 5,675,488.52, representing the total of (a) USD 5,366,708.76 (50% of the Claimant's own fees and expenses for this proceeding other than those incurred in connection with the Request for Reconsideration); (b) USD 233,282.50 (Claimant's own fees incurred in connection with the Request for Reconsideration, the costs of which the Respondent is liable for 100%), and (c) USD 75,497.26 for the expended portion of the Claimant's advances to ICSID in excess of 50%.

## VI. AWARD

186. For the reasons set forth above and in the Decision on Liability and Directions on Quantum dated 3 March 2023, and the Decision on the Respondent's Request for Reconsideration of 25 September 2024, both of which are incorporated and hereby made an integral part of this Award as if fully set forth herein, the Tribunal decides, unanimously, and orders as follows:

(1) The Claimant's claims with respect to its Shareholder Loans are admissible;[280]

(2) The Respondent has violated Article 2.2 of the BIT, first sentence, the obligation to give fair and equitable treatment to investments covered by the BIT, through its failure after the end of the economic emergency, to

[280] Decision on Liability, ¶ 438.

reestablish the economic equilibrium of the Concession within a reasonable time as required by the Concession Contract and the Emergency Law;[281]

(3) The Respondent has also violated Article 2.2 of the BIT, second sentence, by its unjustified conduct in failing to reestablish the economic equilibrium of the Concession within a reasonable time after the end of the economic emergency;[282]

(4) In light of the Tribunal's decision relating to Article 2.2 (first and second sentences), no decision need be reached by the Tribunal on the discrimination claims raised by the Claimant under Articles 2.2, 3 and 4, or the expropriation claim raised by the Claimant under Article 5, of the BIT;[283]

(5) Argentina's defense of necessity is denied;[284]

(6) In compensation for the damages caused by the Respondent's breach of its obligations under Article 2.2 of the BIT (first and second sentences), the Respondent shall pay the Claimant the sum of USD 97,400,000.00;[285]

(7) The Respondent is ordered to pay interest on historical losses at the 12-month LIBOR rate for a relevant period from 1 September 2006 to 31 August 2014, compounded annually;[286]

(8) The Respondent is ordered to pay pre-award interest on the amount awarded under sub-paragraph (6) above as of 1 September 2014 at the rate of four percent (4%) per annum until the date of this Award, compounded annually;[287]

[281] *Ibid.*
[282] *Ibid.*
[283] *Ibid.*
[284] *Ibid.*
[285] Paragraph 171 above.
[286] Paragraph 170(m) above.
[287] Paragraphs 167 and 170(l) above.

(9) The Respondent is further ordered to pay post-award interest on the amount awarded under sub-paragraph (6) above as from the date of this Award until the date of payment, at the rate of 6% per annum, compounded annually;[288]

(10) The Respondent shall bear the Claimant's legal costs incurred in responding to the Request for Reconsideration, and thus reimburse to the Claimant an amount of USD 233,282.50;[289]

(11) The Respondent shall bear 50% of the Claimant's legal fees and expenses incurred in connection with this arbitration proceeding (after deducting the Claimant's legal costs incurred in responding to the Request for Reconsideration, previously decided), and thus reimburse to the Claimant an amount of USD 5,366,708.75;[290]

(12) The Tribunal decides that each Party shall share equally the costs of the arbitration (*i.e.*, the fees and expenses of the members of the Tribunal and the Tribunal's Assistant, ICSID's administrative fees and direct expenses). Accordingly, the Respondent should refund to the Claimant the amount of USD 75,497.26, which corresponds to the expended portion of the Claimant's advances to ICSID in excess of 50%;

(13) All other claims and/or requests raised by the Parties are dismissed.

[288] Paragraphs 166 and 170(l) above.
[289] Paragraph 182 above.
[290] Paragraph 182 above.

Professor Kaj Hobér
Arbitrator

Date: April 24, 2025

Professor Jürgen Kurtz
Arbitrator

Date:

Ms. Lucinda A. Low
President of the Tribunal

Date:

Professor Kaj Hobér
Arbitrator

Date:

Professor Jürgen Kurtz
Arbitrator

Date: April 23, 2025

Ms. Lucinda A. Low
President of the Tribunal

Date:

Professor Kaj Hobér
Arbitrator

Date:

Professor Jürgen Kurtz
Arbitrator

Date:

Ms. Lucinda A. Low
President of the Tribunal

Date: April 23, 2025